82-366

NO. _____

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF LOUISIANA,

Petitioner,

versus

CHARLES F. WALGAMOTTE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI FOR THE STATE OF LOUISIANA

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QUESTIONS PRESENTED

Whether the Louisiana Code of Criminal Procedure Article 579(2) is unconstitutional on its face for vagueness and overbreadth.

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

STATE OF LOUISIANA,

Petitioner,

versus

CHARLES F. WALGAMOTTE,

Respondent.

On Petition for a Writ of Certiorari to
The Supreme Court of the State of Louisiana

BRIEF FOR THE STATE OF LOUISIANA PETITIONER

OPINION BELOW

The opinion of the Supreme Court of Louisiana is reported as *State of Louisiana v. Walgamotte*, 415 So.2d 205 (1982), Rehearing denied and is set out in Appendix B of the petitioner's brief at page A-7.

The Louisiana Supreme Court stayed dismissal of this prosecution until September 4, 1982.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner questions the constitutionality of Louisiana Code of Criminal Procedure Articles 578 and 579(2) for reasons of vagueness and overbreadth which, as it now stands, deprives the state from knowing with any certainty whether or not a defendant has been denied due process as to a reasonable time period in which to commence trial after institution of prosecution.

This case also involves the Fifth, Sixth, Tenth, and Fourteenth Amendments to the Constitution of the United States of America.

STATEMENT OF THE CASE

The autopsy of the armed robbery - murder victim, Mrs. Rita V. Vicknair, age 48, revealed she had died from multiple (22) stab wounds and stangulation.

On July 9, 1973 Charles F. Walgamotte, 15 years of age and his brother, Frank F. Walgamotte age 19 years old, entered White's Auto Store on Central Avenue in Reserve, Parish of St. John the Baptist, Louisiana, which store was operated by Mrs. Rita V. Vicknair and her husband, Donald A. Vicknair. Because Walgamotte and his brother were acting rather suspiciously, they were told by Mrs. Vicknair that if they did not want to buy anything it would be best for them to leave the store. They thereupon left the building.

Shortly thereafter Mr. Donald A. Vicknair went on a mission to Laplace, Louisiana leaving his wife alone in the store. The two brothers returned to the store while Mrs. Rita V. Vicknair was alone. They had armed themselves with a knife. They robbed and killed her.

The following is a confession of the older brother, Frank Walgamotte, as to what actually transpired in the store.

(Frank Walgamotte entered a guilty plea to second degree murder and was sentenced to life imprisonment at hard labor without benefit of parole, probations or suspension of sentence for twenty years).

I, Frank Ford Walgamotte and CHARLES F. WALGAMOTTE, got up at approximately 6:00 P.M., ate and then after that decided to go look for a job. We went on West 5th Street. From there, we started hitchking. We could not get a ride, so we walked a pretty long ways. Then we got up to the turn. We caught a ride with a colored man. From there we went 1-mile to Reserve, then we got off, then we walked 21-blocks to Central Avenue. From there, we walked down to White's Auto Shop, and we browsed around then we decided there was nothing here, so we left; went to the gas station across the street. From there, we had some water then went back to the store, talked to the man, and the man asked me a few questions. For instance, he asked me what was my name. I told him, Frank Myers. He asked me if I lived around here. I live on East 7th Street in Reserve, La. Then we went back looking around. From there we went outside, sat down, 98 °very hot. We decided to go back into the store where they had a nice air condition, talk and look around more. From there we come back out once again. I talked to my brother CHARLES WALGAMOTTE about there was nothing here so what would you like to do? He said. well, maybe we should try to get some guns. I agreed, so then, at approximately 8:30 or 25 to 9,we

decided to go one more time into the store. Looked around, then we left.

We went up to the grocery store, Red & White, to get a knife. We went in, got the knife and come back out. From there we went down. While we were walking, we were discussing what we might, what we should do. We decided to take the knife, put it up to the lady's throat and hold her as a hostage if the man was in the store. If he wasn't, we were going to use the lady as just a hostage in case somebody came into the store. From there we went back. We made it to the store. We waited around 9:00. Then we went back. The lady said, you have nothing better to do except browse around; I said, is it against the law to look? She said, well, it'll be better if you leave. So we left and went back outside. Went back to the gas station; got some more water. Then we sat down. Then the gentleman came out the store, and he drove off so we went back in the store. We put the knife to her throat, then we told her to go in her house. She went in. Then my brother come out, he took the guns, bullets and then he put them in a neat little pile where no one would see, then we back. By that time, I was choking the lady. Then from there, he (my brother, CHARLES) said, maybe I should take a wire or something, so he did. He (CHARLES WALGAMOTTE) put it around her neck and he (CHARLES WALGAMOTTE) choked her more. Then I went out and I grabbed the money while he was watching the lady. Then, I had the money in my pocket, we had the guns. Then we both in there together, then I

took the knife that I had bought, and then I stabbed her and stabbed her until she was dead, using the scissors too. Then from there we left. Then a gentleman, a colored man, came in, into the store. He asked us, he says, "What are you doing? Is there someone watching us or someone to take care of me"? I said, I was minding the store.

He said, ok. I'm looking at these fishing lines. From there we took the bag, my brother (CHARLES WALGAMOTTE) had the guns and the money, took the keys out the lady's pocket book, went outside, got in the car and drove off.

We drove on Central Avenue straight towards the end of highway.From there, they had a train passing so we backed up and went the other way. Throwing away any suspicion at us, we went back on the highway. We went down the River road, threw away the knife, the scissors out of the window. We came upon a funeral. We sat there and waited until the funeral passed and we drove all the way toward the interstate going to New Orleans. We stopped at a red light. They had one Police Officer standing, getting out of his car, he went around the back of us, and stood there watching the highway going to New Orleans. We passed him up. We went straight. Then we went to the city, all the way. I went to my sister's house, Sharon Demark. We talked to her and gave her some of the stolen money that I had owed her. My brother felt sick. Then from there we left. We went to a picture

show after that. Stayed there, spent mostly all of the money. Spent all of the money, just about. From there we went to Congress Street around 8:30 that night. I had a telephone call that was to my aunt's house. So, I decided to call her. I called her. My mother advised me to come out to LaPlace, so they had four plain clothes and two-cars pulled up on Congress. I had a notion that they might have been looking for us by now. So, I went out the back way, climbed a fence, jumped over three fences; went out and started walking not rousing any suspicion.

I told my brother (CHARLES WALGAMOTTE) I did not see him coming behind me. I went straight, caught a ride by hitchhiking on the Avenue. It was very hard to catch a ride, but I caught one ride going to Canal, and from there, caught another one going to the highway, Jefferson highway. Then I caught one that brought me all the way to the airport. By now, it was getting late, 10:00 P.M. somewhere around that. I didn't hear nothing from my brother, no word that he made it or if he didn't. From there, I went to my mother's. I arrived there approximately 11:00 or 12:00 P. M. I talked to my mother; I decided to give myself up, and give a statement.

So, about 8:30 the next morning they came over looking for my brother. My mother went out and told them that I was inside and I was coming. I came out, they checked me, I went into the car; drove over here to the station. In there, they asked me a few ques-

tions about what happened, and I told them the story.

This is the End of the Statement? Answer: Yes. The time is now: 1:17 P.M.

Any questions you want to ask Roy? *Answer:* Yes.

1. *Question:* As you mentioned, before you choked the lady, did she say anything to you? Answer: Yes, she said, "Don't Kill". How many times did she say that to you? Answer: Twice, three times of the most.

2. *Question:* You said you went back into the room? What reason would you give to go back into the room and check if you had choked her until she had fallen on the floor? Answer: Well, since she identified us, we once lived in Reserve, we decided that the only way that would bring them from looking for us would be if we'd kill her.

3. *Lieut. Johnson: Question:* You both decided this? *Answer:* Yes.

4. *Detective Nicholson: Question:* What reason would you give for stabbing her so many times and choking her and tying a cord around her neck? Wouldn't it be more appropriate to tie it around her hand to keep her from moving, around her leg to keep her from moving; not around her neck? *Answer:* Well, she was in an unconscious state already when I started putting the knife in her flesh.

5. *Question:* Where did you pick up the scissors from?

Answer: I seen the scissors so I used them on her arm.

6. *Question:* Why? *Answer:* Thought that it would work a lot better.

Nicholson: Was she moving when you were stabbing her? Making any motion or anything?

Frank Walgamotte: No motions.

Nicholson: What happened to the money? How much money did you'll take?

Frank Walgamotte: Approximately $200.00.

Nicholson: Where did most of it pass? How did you all split it up?

Frank Walgamotte: We split up 50 - 50.

Johnson: Now I don't believe it when you left the car on the road. What did you do with the car?

Frank Walgamotte: We took the car. Wanted to put it down and don't use it. We took it to about a middle of a white/colored neighborhood. We sat it down. Wiped it out clean. Wiped the guns, wiped everything. Then we left it.

Nicholson: Did your mother at any time

advise you to turn yourself in? Or that was your own decision?

Frank Walgamotte: It was my own decision. When we started discussing and I read in the newspaper this morning about the crime, I decided if I turn myself in, I won't commit any more crimes and have myself deeper involved.

Nicholson: Would that be the reason why you abandoned the car with - - -?

Walgamotte: Repeat that please?

Nicholson: Would that be the reason for you abandoning the car . . .

Walgamotte: Yes.

Nicholson: . . .with the gun?

Walgamotte: Yes, that was the reason.

Johnson: What was the main object in robbing the store? Was it for the money or the gun?

Walgamotte: My point of view is for the money. My brother's (CHARLES WALGAMOTTE) was the guns. And partial to the money, too.

Johnson: What did they intend to do with the guns?

Walgamotte: I guess he would probably preform some type of tatic like we have here now.

Johnson: Like what?

Walgamotte: Of Committing the nurder to this woman.

7. *Question:* There were a lot of guns laying around, he could have shot her, before he even started stabbing her, you know, took her to the room at knife point, there was one weapon laying in the bed that wasn't touched or moved.

Answer: We did not notice the weapon. We just focus it on the woman.

8. *Question:* Did she give any kind of resistar or anything besides begging and all?

Answer: None at all.

9. *Lieut. Johnson: Question:* She did offer you any money or anything if you'd let her go or anything like that?

Answer: Nothing, just "Don't kill".

10. *Question:* What was your reason from not taking more guns or more merchandise out of the store than what you'll took?

Answer: Well, we needed what we wanted and could hold out if we were going to plan another job we wouldn't need any unnecessary weapons just what we could carry.

11. *Question:* This was the 1st job you'll ever plan or pulled off? Or you all tried this before?

Answer: We never tried this before.

END OF STATEMENT.

While Mr. Donald A. Vicknair was still away a Mr. Earl Johnson of Mt. Airy, Louisiana entered the store for the purpose of purchasing some articles. He saw the younger of the two defendants putting articles in a paper bag and going to the cash register from which most of the money was removed. He then saw the two defendants hurriedly leave in an automobile belonging to Mrs. Rita V. Vicknair. He followed the car for a while and then returned to White's Auto Store and informed Mr. Dan Beadle, a neighbor, of what he had seen.

Mr. Beadle immediately entered the business section of the store and not seeing anyone went to the residence part of the building where he found Mrs. Rita V. Vicknair on the bedroom floor with numerous stab wounds in her body. Upon the arrival of a doctor she was pronounced dead.

The two brothers were subsequently apprehended, arrested and charged accordingly.

As indicated above, Frank Walgamotte, age 19, pleaded guilty and was sentenced to life imprisonment.

The prosecution of Charles Walgamotte for his part in the crime of first degree murder was properly instituted by grand jury indictment, signed a "true bill" on August 17, 1973. The history of that prosecution reveals that defendant pled guilty to second degree murder in the district court for the parish of St. John the Baptist on May 31, 1974 with the consent of the district attorney. There was no formal amendment of the 1973 indictment. When the district judge vacated the defendant's guilty plea to second degree murder after the hearing held on April 14, 1975, the 1973 indictment was

still outstanding and formed the basis for the trial judge's remanding Walgamotte to the St. John the Baptist Parish prison on that day to await trial for first degree murder.

There followed numerous interrupting legal skirmishes.

Charles Walgamotte was set to tried by jury in April 1981 but at that time filed a Motion to Quash based on the allegation the trial must begin within three years of the date of the institution of the prosecution.

The Louisiana Supreme Court has held the interruptions ended April 1979, therefore the 1981 trial date was 2 years too late. The State now seeks a review of this ruling. *State v. Walgamotte*, 415 So. 2d 205 (1982) (Rehearing denied July 2, 1982.

REASONS FOR GRANTING THE WRIT

LOUISIANA CODE OF CRIMINAL PROCEDURE, TITLE 17, ARTICLE 579(2) IS UNCONSTITUTIONAL FOR REASONS OF VAGUENESS AND OVERBREADTH

In its entirety, La.C.Cr.P. Art. 579 reads:

> "Art. 579. Interruption of time limitation
>
> The period of limitation established by Article 578 shall be interrupted if:
>
> (1) The defendant at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state; or
>
> (2) The defendant cannot be tried because of insanity or because his presence for trial cannot be obtained by legal process, or for any other cause beyond the control of the state.
>
> The periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists."

The challenged section is (2), more particularly, the phrase:

> "* * * or for any other cause beyond the control of the state. . ."

This article provides expresly for an *interruption* rather

than for a suspension of prescription, otherwise known as limitations as to time in which to commence a trial after institution of prosecution. Interruption is generally meant to allow complete halt to tolling of time and revert to counting from day one all over again.

See now C.Cr.P. Art. 578 which provides, in the instant case, that commencement of trial may begin within three years from date of institution of the prosecution. Specifically, the statute reads, in pertinent parts:

> "Art. 578. General rule
>
> Except as otherwise provided in this Chapter, no trial shall be commenced:
>
> (1) In capital cases after three years from the date of institution of the prosecution; . . ."

Note that this writ application is addressed to that phrase "except as otherwise provided in this chapter . . ." which is found in C.Cr.P. Art. 579(2) allowing for interruption when delay for commencement of the trial is "beyond the control of the state."

Petitioner, the State of Louisiana, through the office of District Attorney, alleges herein the Louisiana Supreme Court erred by interpreting the actions and circumstances which delayed the trial in the instant case as not being beyond the control of the state. The fact is the Louisiana Supreme court arbitrarily and capriciously labeled the circumstances not beyond the control of the state when, in fact, no one really knows what the phrase "beyond the control of the state" really means.

The criterion is not based on an "unnecessary delay" as in Federal Rules of Criminal Procedure, Rule 48(b). Rather the criterion employed by the Louisiana Supreme Court was the vague and overbroad phrase "beyond the control of the state."

The phrase "beyond the control of the state" is void for vagueness because the due process standard in giving sufficient warning that an individual responsible may conform his conduct so as to avoid that which is forbidden has not been met. Clearly this Court has held that some statutes will have some inherent vagueness, for "in most English words and phrases there lurk uncertainties," *Robinson v. U.S.*, 324 U.S. 282, 286, 89 L.Ed. 944, 54 S. Ct. 666 (1945), but here even trained lawyers, particularly District Attorneys and Assistant District Attorneys, even after consulting legal dictionaries, treatises, and judicial opinions, cannot identify just what "beyond the control of the state" means. For example, in *State v. DeVito*, 391 So.2d 813 (1980), the District Attorney's office had made every effort to bring the defendant to trial, but because of the State of New Jersey's refusal to release the defendant from the State Prison in Trenton to stand trial, despite compliance with all extradition procedures, the Louisiana Supreme Court held the statute of limitations on commencement of trial had run. Such myopic insistence upon expeditousness in face of a statute which does not delineate on what grounds a delay is necessary or justifiable renders the interruption allowance an empty formality.

The state is at a loss of meeting its burden that the prosecution should not be dismissed when it has to answer such a meaningless phrase like "beyond the control of the state." In one sense, nothing is beyond the control of the state. The state can assert its omnipotent authority to make almost anything happen. On the other hand, what is beyond the

control of the state agency of the office of District Attorney may not be beyond the control of the judges, the Department of Corrections, the Clerk's Office, the police department, etc.

Every District Attorney or Assistant District Attorney is free to create his own standards in each case, based on personal predilections to determine whether it is beyond his control to commence trial under the existing statute. Judgment is based on highly subjective standards and could easily differ from another lawyer's judgment.

Absent more particularized actions, the state cannot make a determination which set of circumstances or which actions or by whom it can be held responsible for any delay to commence a trial under the expression "beyond the control of the state."

The Louisiana Supreme Court could not judge the State as delaying the commencement of trial to the extent of denying the defendant due process under the existing statute.

Petitioner alleges that not only is the statute La.C.Cr.P. Art. 579(2) unconstitutionally vague, as applied in the instant case, but that it is also unconstitutionally vague on its face.

Petitioner states the highly subjective application and interpretation of what is "beyond the control of the state," further denies both parties, the State *and* defendant, of administering *and* receiving justice. *U.S. v. Marion*, 404 U.S. 307, 92 S. Ct. 455, 30 L.Ed.2d 468 (1971). While the statutes of limitations are the primary guarantees against inordinate delays between accusation and trial, *U.S. v. Ewell*, 383 U.S. 116, 86 S. Ct. 773, 15 L.Ed.2d 627 (1966), such a vague "loophole" as the conditioned precedent phrase "beyond the control of the state" denies due process. There

are simply too many different interpretations by simply too many different departments in the state to assure definiteness and certainty on just what the expression means to make it meaningful.

Those interpreting legal skirmishes to either delay or expedite the commencement of a trial are hard put to say just what is the scope of the expression "beyond the control of the state" as a reason for interruption of the running of the statute of limitations. The Louisiana Supreme Court said the State did not meet its burden of proving that it was beyond its control to try the defendant within the statutory delays. *State v. Walgamotte*, 415 So.2d 205 at 211 (1982). However, the court erred in this judgment inasmuch as at another time it could say the State did meet its burden based on similar circumstances. The fact is there is nothing beyond the control of the state that could not, or rather, should not be allowed to deprive a defendant of a speedy trial, or at least a trial within the three-year time period. Yet, time and again, the courts have, *ex propio motu*, lent their own arbitrary interpretation to the meaning of the expression "beyond the control of the state."

The statute is clearly too broad in its expression to be understood. It states "beyond the control of the state" -- such a sweeping phrase only insures an improper application. Such a facially overbroad statute does not regulate the statute of limitations.

Lawyers and non-lawyers alike cannot understand what is "beyond the control of the state," except those actions that are narrowly defined with a definiteness and certainty that does not exist in this statute. The grave danger of smothering C.Cr.P. Art. 578, which limits commencement of a trial within three years with the arbitrary discussion of what is or what is not beyond the control of the state, should

understandably deprive both the state and the defendant of knowing just what their legal rights are. To so broadly allow the phrase "beyond the control of the state" without a narrow definition of what agencies of the state are responsible, or what actions are beyond control, reduces the three-year limit to a meaningless time period that cannot be enforced.

The petitioner submits there is no limiting construction that has been or could be placed on this challenged statute.

Clarity must exist, not only as discussed in the vagueness problem above, but also in the scope of application of the statute. *Plummer v. Columbus*, 414 U.S. 2 (1973); *Palmer v. Euclid*, 402 U.S. 544, 545 (1971).

With respect to C.Cr.P. Art. 579(2), it is possible that a similar statute could have been drafted so as to cure its overbreadth. The caption of statute states "Interruption of time limitation," but the body of the provision is not at all specific as to what acts can interrupt time limitations. The statute, on its face, applies to both state and defendant alike. There is, however, an indication that the overbreadth was not intended by the legislature.

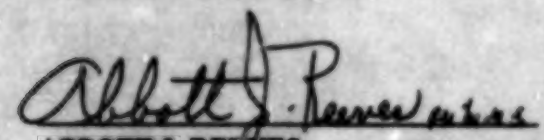
In writing the statute, the legislature made it too broad and, therefore, unconstitutional, because the statute does not present a narrow enough statement to define what exactly is "for any other cause beyond the control of the state."

CONCLUSION

The present case presents the compelling, as of yet unresolved, constitutional question of whether, and under what circumstances, a state trial court must determine what was "beyond the control of the state" to otherwise timely prosecute a criminal case. This question has been left open for many years by this Court and the administration of justice would benefit from a final resolution of this question. The decision below conflicts with the rationale of prior decisions of this Court, the vast majority of jurisdictions which have decided the question and ever past decisions by the Louisiana Supreme Court. For all the reasons stated above, a writ of certiorari should issue to review the opinion of the Supreme Court of Louisiana.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, ABBOTT J. REEVES, ESQ., a member of the Bar of the Supreme Court of the United States, hereby certify that three true copies of the foregoing Brief for Petitioner for Writ of Certiorari were served on Respondent by mailing copies thereof in a duly addressed envelope to G. Walton Caire, Attorney for Defendant-Respondent, at P.O. Box 155, Edgard, Louisiana 70049, this 30th day of August, 1982.

I further certify that all parties required to be served have been served.

Abbott J. Reeves, Pro Se & S.

ABBOTT J. REEVES, ESQ.

APPENDIX A

IN THE
SUPREME COURT OF THE STATE OF LOUISIANA
No. 81-K-2706

STATE OF LOUISIANA,
Plaintiff-Appellee

versus

CHARLES F. WALGAMOTTE,
Defendant-Appellant

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA, NO. 29,284, THE HONORABLE RUCHE J. MARINO, JUDGE PRESIDING

ORIGINAL BRIEF ON THE MERITS ON BEHALF OF THE STATE OF LOUISIANA, PLAINTIFF-APPELLEE

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IN THE SUPREME COURT OF THE
STATE OF LOUISIANA
No. 81-K-2706

STATE OF LOUISIANA,
Plaintiff-Appellee

versus

CHARLES F. WALGAMOTTE,
Defendant-Appellant

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA, NO. 29284, THE HONORABLE RUCHE J. MARINO, JUDGE PRESIDING

ORIGINAL BRIEF ON THE MERITS ON BEHALF OF THE STATE OF LOUISIANA, PLAINTIFF-APPELLEE

STATEMENT OF THE CASE

Charles F. Walgamotte was 15 years old when he was charged on August 17, 1973 with the first-degree murder of Mrs. Rita V. Vicknair by a grand jury indictment (R-6). After a series of events, including numerous pre-trial hearings, plea bargaining, writ applications, a guilty plea, withdrawal of the same, and resetting for trial, he filed a Motion to Quash the indictment on grounds of statute limitations, which was denied by the trial court on March 27, 1981. The Louisiana Supreme Court granted his writ application for review on November 27, 1981 (R-189). At present, relator-defendant is in St. John the Baptist Parish Jail, awaiting trial for the crime of first-degree murder.

FACTS

1.	July 9, 1973	Mrs. Rita V. Vicknair murdered (R-6).
2.	August 17, 1973	Charles F. Walgamotte, age 15, indicted for first-degree murder of Mrs. Rita V. Vicknair (R-6).
3.	August 27, 1973	Walgamotte entered plea of "not guilty and not guilty by reason of insanity" (R-8) with counsel.
4.	September 17, 1973	Walgamotte's counsel moved for appointment of Sanity Commission (R-10).
5.	September 24, 1973	Sanity Commission appointed (R-12).
6.	October 25, 1973	Sanity Commission given extension of time in which to report (R-22).
7.	November 21, 1973	Sanity Commission reports Walgamotte knowledgeable of right from wrong (R-23).
8.	January 9, 1974	Sanity hearing held and Walgamotte found capable of standing trial (R-26).
9.	May 31, 1974	Indictment reduced to second-degree murder, pursuant to plea bargain (R-26).
10.	June 6, 1974	Walgamotte, with counsel, pleads guilty to second-degree murder and sentenced to serve life imprisonment (R-27; *See also* R-32 et seq.)
11.	March 31, 1975	Walgamotte filed Writ of Habeas Corpus, alleging trial court had no jurisdiction once indictment was reduced.
12.	April 14, 1975	Hearing held in trial court. Guilty plea set aside. Remanded for trial on first-degree murder (R-65).

13.	June 17, 1975	Louisiana Supreme Court grants evidentiary hearing (R-49).
14.	June 18, 1975	Hearing set for July 14, 1975 (R-51).
15.	July 14, 1975	Walgamotte filed Motion to Recuse Judge (R-68). Granted. Transferred to Judge Bradley (R-69). Ruling at R-140 (following transcript of hearing which starts at R-94) finds confession was voluntary.
16.	April 30, 1976	Louisiana Supreme Court denies a writ application (No. 57,838). (Writ Application and grounds raised not in record) (R-76).
17.	March 7, 1980	Writ filed in trial court (R-144).
18.	May 12, 1980	Writ Application denied in trial court (R-77) with reasons at R-78, et seq., citing "successive application which fails to allege a new claim."
19.	February 13, 1981	Writ denied (Louisiana Supreme Court No. 80-K-1488) ordering Walgamotte to stand trial for first-degree murder (R-167).
20.	March 24, 1981	Letter from Louisiana Supreme Court querying disposition of habeas petitions in trial court (R-173).
21.	March 27, 1981	Writ denied in trial court (R-175).
22.	April 17, 1981	Writ denied in Louisiana Supreme Court (No. 81-KH-0792) as "moot."
23.	June 12, 1981	Trial set for October 14, 1981 (R-181)
24.	July 30, 1981	Motion to Quash filed by Walgamotte.

25.	September 14, 1981	Hearing held in trial court. Motion to Quash denied.
26.	November 27, 1981	Writ granted by Louisiana Supreme Court (No. 81-K-2706).
27.	December 15, 1981	Record lodged in Louisiana Supreme Court.
28.	January 15, 1982	Supplement Record lodged in Louisiana Supreme Court.
29.	January 15, 1982	Brief filed by Walgamotte's attorney, alleging statute of limilations were not interrupted.

LAW AND ARGUMENT

Walgamotte had his sentence for second-degree murder set aside on April 14, 1975. He was remanded for trial on first-degree murder on that same day.

A motion to Quash was filed on July 30, 1981. It was denied in trial court on September 14, 1981. A writ was granted by this Court on November 27, 1981. Briefing schedule concluded on February 20, 1982.

The State submits the clock began to run in this matter on April 14, 1975. Barring suspension of time running pursuant to C. Cr. P. Art. 580 and interruptions pursuant to C. Cr. P. Art. 579, trial should have been commenced by April 14, 1978. C. Cr. P. Art. 578. However, interruptions beyond the control of the State under C. Cr. P. Art. 579 did take place, causing the limitations of C. Cr. P. Art. 578 (three years) to commence to run anew. Specifically, an evidentiary hearing was ordered by this Court on June 17, 1975. A Motion to Recuse the Judge was filed on July 14, 1975. Writ applications denied by Louisiana Supreme Court on April 30, 1976 and April 17, 1981 further suspends time for commencement of trial. In view of the approxi-

mately five year period of suspension of time, the State submits the present setting for October 14, 1981 was timely.

FOR THE FOREGOING REASONS, the State submits the writ was improvidently granted and should be vacated and the case remanded for trial.

RESPECTFULLY SUBMITTED,

HARRY L. MOREL, JR.
DISTRICT ATTORNEY
TWENTY-NINTH JUDICIAL DISTRICT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

/s/ ABBOTT J. REEVES
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APPENDIX B

STATE of Louisiana
v.
Charles F. WALGAMOTTE.
No. 81-K-2706
Supreme Court of Louisiana.
May 17, 1982
Rehearing Denied July 2, 1982

CALOGERO, Justice

Charles F. Walgamotte was fifteen years old when on July 9, 1973 he allegedly participated in committing a first degree murder upon the female co-owner of an auto parts store in Reserve, Louisiana. The state attempts to continue this capital prosecution originally instituted by grand jury indictment on August 17, 1973.1/

Defendant contends that prosecution at this late date is barred by C.Cr.P. art. 578 which provides essentially that no trial shall be commenced in capital cases after three years from the date of institution of the prosecution.2/

1/ The defendant has been incarcerated continuously since his arrest on July 9, 1973: eleven months in the St. John the Baptist Parish jail and seven years in the Louisiana State Penitentiary at Angola, excluding three months in 1975 when he was temporarily back in St John the Baptist Parish for post conviction hearings.

2/ C.Cr.P. art. 578 reads as follows:
Except as otherwise provided in this Chapter, no trial shall be commenced:
(1) In capital cases after three years from the date of institution of the prosecution;
(2) In other felony cases after two years from the date of institution of the prosecution; and
(3) In misdemeanor cases after one year from the date of institution of the prosecution.
The offense charged shall determine the applicable limitation.

He further contends that there has been no interruption of the three year limitation as required by Article 579(2) 3/

We granted writs upon defendant's application following a trial court ruling on September 14, 1981 denying his motion to quash.

For the reasons which follow, principally because the state inexcusably neglected to commence trial for a period in excess of three years uninterrupted by any cause specified in Article 579 of the Code of Criminal Procedure, we reverse the ruling of the trial court and order defendant released. Assuming that the limitation period on commencing trial was interrupted between the August 17, 1973 indictment and April 30, 1976, the date of this Court's denial of his writ application (No. 57,838), and between March 7, 1980 and the present time, there was nonetheless a period in excess of forty-six months (April 30, 1976 through March 7, 1980) during which the state could and should have commenced trial, a period not interrupted by any of the causes outlined in C.Cr.P. art 579. As will be seen hereinafter, there was no action taken to bring the defendant to trial between the April 30, 1976 writ denial and the March 7, 1980 filing of defendant's habeas petition in the district court.

3/ C.Cr.P. art 579 reads as follows:

The period of limitation established by Article 578 shall be interrupted if:

(1) The defendant at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, outside the state, or is absent from his usual place of abode within the state; or

(2) The defendant cannot be tried because of insanity or because his presence for trial cannot be obtained by legal process, or for any other cause beyond the control of the state

The periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists.

This case has had a long and tortuous procedural history which we will attempt here to trace.

The crime with which defendant is charged occurred on July 9, 1973. He was indicted on August 17, 1973 and brought on for arraignment on August 27, 1973, at which time he pleaded not guilty by reason of insanity. A sanity commission was appointed to examine the defendant. At the sanity hearing on January 9, 1974, the court found that Charles Walgamotte was sane at the time the crime was committed and was capable of standing trial.

On May 31, 1974, represented by appointed counsel, Charles Walgamotte and his brother Frank entered a plea bargain with the state. The state assented, and defendant and his brother each entered unqualified guilty pleas to second degree murder, and they were sentenced by the trial judge to life imprisonment at hard labor without benefit of parole, probation or suspension of sentence for twenty years.

On January 20, 1975, this Court decided a case pertinent to Charles Walgamotte's situation: *State ex rel. Moore v. Warden of Louisiana St. Pen. at DeQuincey*, 308 So.2d 749 (La. 1975) wherein we found that under the then prevalent provision of the Louisiana Constitution and La.R.S. 13: 1570, the district court did not have jurisdiction to accept a plea of guilty and impose sentence upon a fifteen year old for second degree murder, a non-capital offense. Moore's plea and sentence was set aside and he was remanded to the district court for further proceedings. 4/ *Supra* at 752.

4/ Since our *Moore* decision, the law relative to juvenile crimes and jurisdictions has been changed. *See generally: State v. Lecour*, 398 So.2d 1129 (La. 1981); *State ex rel Johnson*, 384 So.2d 402 (La. 1980); *State v. Sheppard*, 371 So.2d 1135 (La. 1979); *State ex rel Davis*, 368 So.2d 1092 (La. 1979); *State ex rel Coco*, 363 So.2d 207 (La. 1978). Under the most recent constitutional changes the Legis-

On March 31, 1975 defendant, through his attorney, filed a petition in the district court requesting that a writ of habeas corpus be issued because he was being unlawfully detained at the Louisiana State Penitentiary at Angola. The petition declared that the defendant had been fifteen years old when charged. Under La. R.S. 13:1570(5) the district court had lost jurisdiction when the guilty plea to second degree murder was entered and therefore the defendant should be released from Angola and placed in the custody of proper juvenile authorities.

On April 14, 1975 in response to that petition the trial judge vacated the guilty plea to second degree murder, and remanded Walgamotte to the parish prison of St. John the Baptist to await trial on the first degree murder charge rather than placing him in the custody of juvenile authorities.

On May 14, 1975 defendant through counsel filed a writ application in this Court (State v. Charles Walgamotte No. 56304 on the docket of this Court). Essentially he contended that because on May 31, 1974 the adult district court was without jurisdiction to take a plea to second degree murder as relates to a fifteen year old juvenile, and because the district judge in the parish of St. John the Baptist was both the adult and juvenile judge, the entry of guilty plea to second degree murder should have been permitted to stand, and defendant should therefore have been sentenced as a juvenile for the crime of second degree murder. Had he been sentenced as a juvenile, he would have been confined in a

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4/ Continued
lature is invested with a greater role. La.Const.Art. V §18 and §10 Furthermore by Acts 1975, No. 337 §1, the Legislature amended La. R.S. 13:1570 to provide for the district court's retaining jurisdiction over a juvenile defendant who, when charged with the greater crime which confers district court jurisdiction, pleads guilty to a lesser included offense.

juvenile facility only to age twenty-one. Accordingly, he complained of the trial court's ruling of April 14, 1975 upsetting the guilty plea and remanding him to the sheriff for trial for first degree murder in the adult district court.

To entertain defendant's contention that he was due juvenile punishment for his second degree murder plea, and that, in light of the state's accepting a plea to second degree murder, prosecution anew for first degree murder was impermissible, this Court on June 17, 1975 granted the writ in part and ordered the trial court "to conduct an evidentiary hearing to determine the nature, content and effect of the plea bargain agreement. Other proceedings stayed pending that hearing."

In response to that action by this Court the trial judge, on June 19th, set an evidentiary hearing for July 14, 1975. On that day, on motion of counsel for the defendant, Judge Marino recused himself because he was to be called to testify about the circumstances surrounding the earlier plea. The hearing was thereafter conducted by Judge Bradley.

At that hearing, there was some disagreement about whether the defendant had been promised he might serve his time at DeQuincy rather than Angola. Nevertheless it was evident that he entered his plea to second degree murder with the punishment to be life imprisonment at hard labor, in order to avoid exposure to the death penalty. There was clearly no deal or understanding that he would be treated as a juvenile upon entering the second degree murder plea. At the conclusion of the hearing, Judge Bradley ordered that the evidentiary hearing be transcribed and placed at the disposal of the Court for its study. He went on to recite that because this Court may have expected him to make a ruling at the conclusion of the evidentiary hearing, he would do so. And he ruled that the plea of May 31, 1974 was voluntary.

The transcript of that July 14, 1975 hearing was filed in this Court on September 5, 1975. Defendant, who had been returned from Angola on April 10, 1975 for the purpose of the evidentiary hearing, was returned to Angola on July 29, 1975.

Then on April 9, 1976, in proceedings No. 57838 on the docket of this Court, defendant through counsel applied here again contending that inasmuch as the hearing had been conducted pursuant to our order of June 17, 1975, to probe into the circumstances surrounding the entry of the guilty plea of May 31, 1974, this Court should rule on the substance of his contentions (those contained in his March 31, 1975 district court habeas petition and his writ No. 56804; in this Court). Therein he had claimed as we have already noted that he should not have been remanded to the sheriff for trial on first degree murder, but should either have been released or permitted to have the second degree murder plea maintained, with juvenile punishment imposed.

This Court on April 30, 1976 denied the writ observing that relator was not entitled to any such relief. Justice Dixon concurred in the denial being of the opinion that the applicant "cannot receive a more serious sentence than that previously imposed." As was the custom of this Court at that time, due notice of the action on the writ was sent to the proper parties and authorities involved and to the lower court. Inasmuch as the ruling under consideration was the trial judge's vacating and remanding for trial on first degree murder, this Court's denial placed the case in the posture of being ready for trial on the first degree murder indictment.

No further action was taken on this case in the district court or in this Court for more than three years during which time defendant has been in Angola without an out-

standing conviction. Thereafter the following took place:

On March 7, 1980 Wolgamotte, apparently mistaken about the status of his case, filed a pro se writ application in the district court to have the original plea vacated and to be released from confinement since by then he was twenty-one years old. Judge Marino dismissed defendant's habeas petition on May 12, 1980 as "being res judicata in being fully litigated" (sic). No. 80-K-1488 on this Court's docket, a pro se writ application by defendant, was filed on July 1, 1980 complaining of Judge Marino's dismissal and seeking to have the original plea vacated. On February 13, 1981 this Court denied the application with the following language:

> By this application relator seeks to have his guilty plea to and the resultant conviction for second degree murder vacated. The application is denied because the request is moot. Information supplied this Court indicates that on April 14, 1975, the trial judge ordered the guilty plea withdrawn and relator remanded to parish prison to await trial for first degree murder. The stay order granted applicant by this Court on June 17, 1975, in connection with an earlier application by this relator coincident with our ordering the trial court to conduct an evidentiary hearing regarding relator's guilty plea, is no longer in effect.

The Chief Justice concurred: "It appears that relator is in Angola under a sentence vacated six years ago and there are no charges against him."

Thereafter defendant filed a pro se habeas petition in the district court on February 19, 1981 seeking relief and citing

the language employed in the writ denial in No. 80-K-1488 and the Chief Justice's concurring language.

One month later, without the trial judge's having ruled on his March 19, 1981 filing in that court, Walgamotte filed a pro se habeas application in this Court (March 28, 1981, No. 81-KH-0792) to have us require the district court to rule. On April 17, 1981 having learned that the court had taken action on March 27, 1981, concerning defendant's February 19, 1981 filing, we denied the writ as moot. The trial court had dismissed the application "as it pertains to release" and had ordered that "the defendant be transported and held without bond for trial of First Degree Murder." Counsel was appointed on June 9, 1981 (coincidentally, the same lawyer who had been appointed to represent him shortly after his 1973 indictment 5/ and the case set for trial on October 14, 1981.

On July 30, 1981 defendant's attorney Caire filed a motion to quash the indictment complaining that there had been an uninterrupted three year delay following indictment without the state's having brought defendant on for trial. Alternatively, the defendant argued in the motion to quash that his being fifteen at the time he pleaded guilty to second degree murder placed him under the juvenile laws of the state. The juvenile laws provide for release at age twenty-one. Since defendant was then twenty-three years old, he should be released.

On September 18, 1981, the trial court denied the motion to quash, finding, on the one hand, that the defendant was

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5/ It appears from the record that attorney Caire's initial representation of the defendant was for the period from arraignment on August 27, 1973 through sentencing on May 31, 1974. Attorney James Woods represented Walgamotte in the proceedings relative to writ applications from May 14, 1975 through April 20, 1976. From March 8, 1980 through June 9, 1981, Walgamotte acted on his own behalf through pro se filings in the district court and in this Court.

not under the authority of the juvenile courts and, on the other, that the time limitations had been interrupted by the defendant's actions in filing the various writ applications. The judge also alluded to principles of estoppel. 6/

On November 27, 1981 we granted defendant's writ application to review the denial of the defendant's motion to quash. We turn now to consideration of the substance of relator's complaint.

The prosecution of Charles Walgamotte for his part in the crime of first degree murder was properly instituted by grand jury indictment signed a "true bill" on August 17, 1973. The history of that prosecution, recited hereinabove, reveals that defendant pled guilty to second degree murder in the district court for the parish of St. John the Baptist on May 31, 1974 with the consent of the district attorney. C.Cr.P. art. 558; *State v. Green*, 263 La. 837, 269 So.2d 460 (1972). The district attorney acquiesced in the plea, as permitted by C.Cr.P. art. 487. *State v. Green, supra.* There was no formal amendment of the 1973 indictment. When the district judge vacated the defendant's guilty plea to second degree murder after the hearing held on April 14, 1975, the 1973

6/ The trial judge stated from the bench:
This Court is of the opinion that in reference to Article Number One, Article 578.1, the capital case, stating that three years of prosecution, this Court is of the opinion that when this particular matter was set for trial on the first degree murder case is that counsel for the defendant and the defendant sought another remedy of which the remedy was by writ or by the appellate process of the Supreme Court, and at this particular time, this Court finds that the prescription was either suspended or interrupted, and really at the most is that equitable estoppel would work in this particular regard in that the State was at the particular time waiting for the Supreme Court to make whatever decision that they should have made in reference to this particular matter (sic).

indictment was still outstanding and formed the basis for the trial judge's remanding Walgamotte to the St. John the Baptist Parish prison on that day to await trial for first degree murder.

The proceedings which took place thereafter, culminating in the writ denial by this Court on April 30, 1976, did serve to suspend the running of the time limitations for commencement of trial. Those proceedings included a stay of proceedings on June 17, 1975, an evidentiary hearing on July 14, 1975, the transmission to this Court of the transcript to this Court on September 5, 1975 and writ application of April 9, 1976. These interrupting legal skirmishes concluded on April 30, 1976 when we denied defendant's application and upheld the trial judge's ruling of April 14, 1975 wherein the trial judge had ordered the defendant held over for trial as an adult on first degree murder. The district attorney of St. John the Baptist Parish had from that point three years in which to bring Charles Walgamotte to trial as an adult on the first degree murder charge. 1/ That trial should therefore have been commenced on or before April 30, 1979. Any effort by the defendant after April 30, 1979 to secure his release from confinement, which he had reason to believe was illegal, has no bearing on the time limitations which had already expired and the legal effect thereof. Therefore the state's contention that the defendant's April 27, 1981 writ application had served to interrupt the time available for commencing trial is without merit.

A motion to quash the indictment is the proper procedural vehicle for challenging an untimely commencement of trial. C.Cr.P. art. 581 and C.Cr.P. art. 532(7). For a capital offense, trial must begin within three years of the date of the institution of the prosecution. C.Cr.P. art. 578)1). As noted in the

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1/ We note that the present district attorney for St. John the Baptist Parish did not take office until January 1, 1979.

official comment (a) to this codal provision, Louisiana allows the state a considerably longer time period in which to begin trial than do other states.

In *State v. Theard,* 212 La. 1022, 34 So.2d 248 (1948) quoting *State v. Theard,* 203 La. 1026, 14 So.2d 824 at 825 (1943) we consider the purpose of statutory requirements of dismissal when legislatively mandated time limitations have elapsed. They are:

> to enforce the right of an accused to a speedy trial and to prevent the oppression of citizens by suspending criminal prosecutions over them for an indefinite time *as well as to prevent delays in the administration of justice by imposing on judicial tribunals an obligation of proceeding with reasonable dispatch in the trial of criminal accusations.* (Emphasis added.)

More recently, in *State v. Alfred,* 337 So.2d 1049 (La. 1976) (On rehearing) we noted specifically at 1055-1056:

> . . . in a capital case Article 578 of the Code of Criminal Procedure allows a delay of three years from the date of institution of the prosecution within which the trial may be commenced. Such an enactment is a recognition by the legislature that the time limitation thereby ordained is reasonable and acceptable under ordinary circumstances. Statutes of limitation are the primary guarantees against inordinate delays between accusation and trial. La.Code Crim. Pro. arts. 578-82; 18 U.S.C.A. §§3281-82; *United States v. Ewell,* 383 U.S. 116, 86 S. Ct. 773, 15 L.Ed.2d 627 (1966);

State v. Howard, 325 So.2d 812 (La. 1976); *State v. Stetson*, 317 So.2d 172 (La.1975); *State v. Gladden*, 260 La. 735, 257 So.2d 388 (1972). These statutes represent a legislative assessment of relative interests of the State and defendant in administering and receiving justice, and they should be considered by the courts. *United States v. Marion*, 404 U.S. 307, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971); *State v. Theard*, 203 La. 1026, 14 So.2d 824 (1943).

The Code of Criminal Procedure does however allow for the interruption of time limitations in the instances enumerated in C.Cr.P. art. 579. C.Cr.P. art. 579(2) on which the state relies provides in pertinent part for the interruption of time limitations if:

> (2) The defendant cannot be tried . . . for any other cause beyond the control of the state.

However the State bears the burden of proving that it was beyond its control to try the defendant within the statutory time delays. *State v. Devito*, 391 So.2d 813 (La. 1980) (On rehearing).

The state has not borne its burden of showing that commencing the trial of Charles Walgamotte for first degree murder within three years after April 30, 1976 was beyond their control. The defendant was within reach of the state, either in the custody of the sheriff of St John the Baptist Parish or of the warden at Louisiana State Penitentiary at Angola. There was nothing preventing the state from compelling his presence for trial, as they eventually did in 1981. The state failed to begin trial within three years under La. C.Cr.P. 578.

Decree

The district court's denial of defendant's motion to quash is therefore reversed. The motion is granted.

DISTRICT COURT RULING REVERSED; MOTION TO QUASH GRANTED.

APPENDIX C

SUPREME COURT OF LOUISIANA

New Orleans, 70112

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 2nd day of July, 1982, the following action was taken by the Supreme Court of Louisiana, composed of Chief Justice John A. Dixon, Jr., and Associate Justices Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jr., Jack Crozier Watson, and Harry T. Lemmon, in the case listed below:

REHEARING DENIED:

81-KA-2706 State v. Charles F. Walgamotte (St. John the Baptist Parish) LEMMON, J., would grant a rehearing.

APPENDIX D

IN THE
SUPREME COURT
OF THE
STATE OF LOUISIANA

NO:81-K-2706

STATE OF LOUISIANA,
PLAINTIFF-APPELLEE

VERSUS

CHARLES F. WALGAMOTTE,
DEFENDANT-APPELLANT

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA, NO. 29,284, THE HONORABLE RUCHE J. MARINO, JUDGE PRESIDING

MOTION AND ORDER FOR STAY OF MANDATE

MAY IT PLEASE THE COURT:

NOW COMES, the State of Louisiana, through District Attorney Harry Morel and Assistant District Attorney, Abbott J. Reeves, and with respect moves this Court for a stay of mandate issued on July 2, 1982 by this Court which ordered the defendant-appellant discharged.

Charles F. Walgamotte was 15 years old when he was charged on August 17, 1973 with the first-degree murder

of Mrs. Rita V. Vicknair by a grand jury indictment. After a series of hearings, plea bargaining, writ applications, a guilty plea, withdrawal of the same, and resetting for trial, he filed a Motion to Quash the indictment on grounds of statute of limitations, which was denied by the trial court on March 27, 1981. The Louisiana Supreme Court granted his writ application for review on November 27, 1981, despite having ordered a new trial in February, 1981. (80-K-1488).

The original opinion was rendered on May 17, 1982 by a 6–1 vote, Associate Justice Harry Lemmon dissenting. Application for Rehearing was denied on July 2, 1982.

The State seeks a 90 day stay of mandate pending application for writ of certiorari in the United States Supreme Court, Washington, D. C.

GROUNDS FOR GRANTING THE STAY OF MANDATE

The defendant committed a most brutal crime, having murdered Mrs. Rita V. Vicknair on July 9, 1973. He entered a plea of not guilty and not guilty by reason of insanity. It was only on a technicality ("Juvenile Court v. District Court", re: jurisdiction when original charge was reduced) that his earlier plea of guilty to second degree murder and sentence to life imprisonment was set aside. After numerous delays on the part of both the defense and the State, the defendant was before this Court seeking release based on expiration of time period for retrial. The State is preparing a writ application to the United States Supreme Court seeking clarification of what acts are interruptions beyond the control of the State and would cause the limitations period to be suspended or to run anew.

The State submits its arguments regarding the jurisdiction issue after the first degree murder charge was reduced pur-

suant to a plea bargain does not preclude prosecution. The total amount of time that elapsed covering delays that were beyond the control of the State, in addition, still permits prosecution. For example, a sanity commission examination delayed prosecution as did delays for recusal of the judge, transfer of the case and various writ applications. Particularly, on February 13, 1981 this Court ordered Walgamotte to stand trial for First Degree Murder (Docket # 80-K-1488).

The State is arguing there were interruptions for reasons beyond the control of the State, C.Cr.P. art. 579; there were innumerable suspensions of time limitations under C.Cr.P. art. 580; and that where *other dilatory pleas obtained by the defendant - - including numerous repetitive writ applications*, the period of limitation has in fact been interrupted. *While the writ applications were being processed, it was impossible for the State to have brought Walgamotte to trial.* C.Cr.P. art. 579 (2). Walgamotte himself (pro se) and through counsel, accounted for approximately two years of delays by virtue of filing writ applications. The State was denied access to Walgamotte, denied obtaining his presence by legal process at a trial by reason of these writ applications.

Under *Moore vs. Arizona*, 414 U.S. 25, 38 L. Ed. 2d 183, 94 S. Ct. 188 (1973), the United States Supreme Court expressed the unanimous view that an affirmative demonstration of prejudice to the accused was not essential to prove a denial of his constitutional right to a speedy trial, and that case was remanded for reassessment under proper constitutional standards.

In *Kloper vs. North Carolina*, 386 U.S. 213 (1967) the United States Supreme Court held this issue presents a federal query under the 14th Amendment to the United States Constitution.

FOR THE FOREGOING REASONS, the State seeks a stay of this Court's Mandate dated July 2, 1982 pending application for a writ to the United States Supreme Court.

Respectfully submitted,

HARRY MOREL, DISTRICT ATTORNEY
29TH JUDICIAL DISTRICT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

/s/ Abbott J. Reeves,
ABBOTT J. REEVES,
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TELEPHONE: (504) 367-1212

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on Counsel for all parties by depositing same in the U.S. mails this 6 day of July, 1982.

/s/ Abbott J. Reeves
ABBOTT J. REEVES

ORDER

CONSIDERING THE FOREGOING MOTION, and reasons set forth therein, a stay of mandate is hereby granted until the 4th day of September, 1982 in the above-captioned matter.

New Orleans, Louisiana this 6th day of July, 1982.

/s/ Pascal F. Calogero, Jr.
Associate Justice

SUPREME COURT OF LOUISIANA
A TRUE COPY

/s/ Dan B. Haggerty, Jr.
Dan B. Haggerty, Jr.
Deputy Clerk

NO. 82-966

Office-Supreme Court, U.S.
FILED
OCT 5 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF LOUISIANA,

Petitioner,

versus

CHARLES F. WALGAMOTTE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF IN OPPOSITION TO CERTIORARI

G. WALTON CAIRE
Post Office Box 155
Edgard, Louisiana 70049
Telephone: (540) 497-3235

ATTORNEY FOR RESPONDENT
CHARLES F. WALGAMOTTE

QUESTIONS PRESENTED FOR REVIEW

I.

Does this Court have jurisdiction over this matter under either 28 U.S.C 1254(1) or 28 U.S.C. 1257(3), when no federal court of appeal has heard this case, where no state statute has ever been drawn into question on the ground of its being repugnant to the Constitution, treaties or laws of the United States in any state court proceeding, and where independent state grounds, specifically La. Code Criminal Procedure Articles 578-81, are sufficient for the state court's judgment?

II.

Does Petitioner, the State of Louisiana, have standing to bring this petition where no rights of the State guaranteed or protected by the Fifth, Sixth, Tenth or Fourteenth Amendments to the United States Constitution, or the doctrines of vagueness and overbreath, are at issue?

III.

May this Court entertain petitions for advisory opinions under U.S. Constitution Article III, Paragraph 2?

IV.

Are the issues presented here so special and important as to counsel this Court to grant a Writ of Certiorari?

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

STATE OF LOUISIANA,

Petitioner,

versus

CHARLES F. WALGAMOTTE,

Respondent.

On Petition for a Writ of Certiorari to
The Supreme Court of the State of Louisiana

BRIEF FOR RESPONDENT

OPINION BELOW

The opinion of the Supreme Court of Louisiana is reported as *State of Louisiana v. Walgamotte*, 415 So.2d 205 (1982), Rehearing denied and is set out in Petitioner's Appendix B.

JURISDICTION

This Court lacks jurisdiction over this matter under the provisions of either 28 U.S.C. 1254(1), 28 U.S.C. 1257(3), or U.S. Constitution Article III, Paragraph 2.

STATEMENT OF THE CASE

Petitioner's Statement of the Case is woefully inadequate in that it presents the procedural heart of this litigation in the following summary fashion:

> There followed numerous interrupting legal skirmishes. Petition, at 12.

This summary obscures the fact that it is precisely the nature and timing of these so-called "legal skirmishes" that formed the basis of the Louisiana Supreme Court's decision in respondent's favor.

As this state court litigation is concerned soley with the operation of La. Code Criminal Procedure Article 578-81, the state's limitation statutes on the commencement of criminal trials, they are set forth here:

> ART. 578. GENERAL RULE
>
> "Except as otherwise provided in this Chapter, no trial shall be commenced:
>
> (1) In capital cases after three years from the date of institution of the prosecution;
>
> (2) In other felony cases after two years from the date of institution of the prosecution; and
>
> (3) In misdemeanor cases after one year from the date of institution of the prosecution.

The offense charged shall determine the applicable limitation."

ART. 579. INTERRUPTION OF TIME LIMITATION

"The period of limitation established by Article 578 shall be interrupted if:

(1) The defendant at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state; or

(2) The defendant cannot be tried because of insanity or because his presence for trial cannot be obtained by legal process, or for any other cause beyond the control of the state.

The periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists."

ART. 580. SUSPENSION OF TIME LIMITATIONS

"When a defendant files a motion to quash or other preliminary plea, the running of the periods of limitation established by Article 578 shall be suspended until the ruling of the court thereon; but in no case shall the state have less than one year after the ruling to commence the trial."

ART. 581. EXPIRATION OF LIMITATIONS; MOTION TO QUASH; EFFECT

"Upon the expiration of the limitations established by this Chapter, the court shall, upon motion of the defendant, dismiss the indictment. This right of dismissal is waived unless the motion to quash is made prior to trial.

If the indictment is dismissed under this article, there shall be no further prosecution against the defendant for the same or a lesser offense based on the same facts."

The crime with which respondent is charged occurred on July 9, 1973. The subject of this present litigation did not commence until April 30, 1976. Because the complete record has not yet been lodged in this case, respondent relies, with this Court's indulgence, on the procedural facts preceeding this April 30, 1976, date as contained in the Louisiana Supreme Court's opinion at issue here. (Petition, Appendix B.).

However, respondent emphasises that as of April 30, 1976, he had no preliminary pleas, petitions, writ applications, or any other pleas or papers pending in any court. He was at that time in the custody of the Warden of the Louisiana State Penitentiary, and thus available to be brought to trial. In sum there were no impediments, legal or physical, to prevent the State from bringing this matter on for trial, and thus the three year limitation period under state law commenced to run anew as of that date. (Petition, Appendix B).

For reasons which do not appear in any of the State's pleadings in state courts, or in its petition for a writ of certiorari to this Court, respondent was allowed to languish in prison for almost four years for what the State Supreme Court termed "inexcusable neglect" on the part of the prosecutor. (Petition, Appendix B, at A-8).

Again relying on the State Supreme Court's rendition of facts, respondent admits that on March 7, 1980, he filed a pro se writ with the district court seeking relief to which he was not entitled under state law. He subsequently filed several other pro se applications in the state courts, all of which were denied as moot because he did not understand the procedural posture of his case. (Petition, Appendix B).

These applications did serve, however, to bring respondent to the attention of the State, and a trial date was finally set, and counsel appointed on June 9, 1981. (Petition, Appendix B).

On July 20, 1982, respondent filed a Motion to Quash the indictment on the grounds that no action had been taken by the State for over three years, and thus that further prosecution was barred by La. Code Criminal Procedure Articles 578-81; no federal right to a speedy trial or any other federal question was raised by respondent in this motion, (Appendix A), or in any subsequent proceeding in State Court. This motion was denied by the district court without reference to any federal claim (Appendix B). Moreover, the State specifically alluded to the fact that respondent raised no speedy trial claim, either federal or state, in the district court proceeding. (Appendix B, at 3).

On application for a writ to the State Supreme Court, respondent again raised only state grounds to Quash the indictment. (Appendix C). Similarly, in his brief in support

of this motion to quash, respondent urged only state grounds. (Appendix D). The State's Brief in opposition to this motion similarly raised only the issue of what constituted the suspension or interruption of time under state law. (Petition Appendix A).

The Louisiana Supreme Court ruled on May 17, 1982, that as the State had not shown that the forty-six month delay in bringing respondent to trial was beyond its control, further prosecution for the alleged capital offense was barred by the operation of La. Code Criminal Procedure Articles 578-81. Respondent was thereupon ordered released from custody. (Petition, Appendix B).

The State thereupon filed an application for rehearing alleging that Louisiana law relating to the limitations on commencement of criminal trials was of such "Mandarin" and "labyrinthine" complexity, a complexity apparently unrecognized in its two page legal argument on original hearing (Petition, Appendix A), that it needed additional time until July 1, 1982, to file a Brief for rehearing. (Appendix E). In response to this application, the State was granted until June 28, 1982, to file this brief for rehearing. Nonetheless, on June 29, 1982, after time had expired, and no Brief was forth coming, the State sought yet additional time in which to file its brief on rehearing. (see Appendix F). This motion was denied by the State Supreme Court, and the judgment of May 17, 1982, was made final on July 2, 1982. (Petition, Appendix C).

Four days later, on July 6, during which four day period respondent remained incarcerated after order of his release by the Louisiana Supreme Court, the State filed a Motion and Order for Stay of Mandate with the State Supreme

Court requesting ninety days in which to petition this Court for a writ of certiorari on the grounds that this case presents a query under the Fourteenth Amendment to the United States Constitution. (Petition, Appendix D).

This was the first time that any federal question was ever raised in this litigation. Being raised after final judgment by the State Supreme Court, this claim was not, and indeed could not, have been adjudicated by that Court or by any other state court.

In response to this application, petitioner was granted until September 4, 1982, to perfect a petition to this Court. (Petition, Appendix D, at A-25).

On August 31, 1982, the State filed a Petition for Writ of Certiorari with this Court seeking review of the Louisiana Supreme Court decision in *State v. Walgamotte*, 415 So.2d 205 (La. 1982) (Petition, Appendix B). It also sought an extension of the state court's stay of mandate from September 4, 1982, until this Court rendered an opinion in this matter. (Appendix G). The State Supreme Court granted the State an additional ten days to seek a further stay of its mandate. (Appendix H).

Responding to the State's application for a stay order in this Court, (Appendix I), Justice Byron White concluded that as the state court decision appeared to be grounded in state law, and that no issue of federal law was apparently implicated, this Court was without jurisdiction to review this matter. The request for a stay order was thus denied. (Appendix J). This denial resulted in respondent's release from prison on September 13, 1982, some seventy days after the State Supreme Court's order of his release.

ARGUMENT

Petitioner cites 28 U.S.C. 1254(1) as grounds for the Court's jurisdiction in this matter. As that statute provides for jurisdiction only from federal courts of appeals, a writ of certiorari for review of a decision by the Louisiana Supreme Court cannot issue under any of its provisions.

Respondent recognizes that jurisdiction would lie under 28 U.S.C. 1257(3), had that ground been urged by Petitioner and had a federal question been decided by the state courts. However, no federal question has ever been raised in this litigation prior to final judgment in the State Supreme Court.

This Court has directly and repeatedly held that where a state statute has not been attacked in the state courts below as being repugnant to the Constitution, treaties or laws of the United States, 28 U.S.C. 1257(3) does not confer jurisdiction. Most recently, in *Webb v. Webb*, 451 U.S. 493, 101 S. Ct. 1889,1892, ____ L.Ed.2d ____ (1982), this Court reiterated this settled jruisprudence as follows: Court reiterated this settled jurisprudence as follows:

> It is a *long settled rule* that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system. (Emphasis added).

In the instant case, no federal claim was ever raised by respondent or petitioner in state proceedings prior to final judgment. (Appendix A-F; Petition, Appendix A-C)

Neither did the Louisiana Supreme Court expressly or implicitly rely on any federal question in construeing state law. (Petition, Appendix B).

The only possible, but remote, reference to a constitutionally protected right which appears in the record is mention in the Louisiana Supreme Court's opinion that the purpose of the state's limitation statute on the commencement of criminal trials is "to enforce the right of an accused to a speedy trial." (Petition Appendix B, at A-17). Respondent points out, however, that La. Constitution Article 1, Paragraph 16 states that "every person charged with a crime . . . is entitled to a *speedy . . . trial.*" (Emphasis added). It is submitted here that the reference to a speedy trial in the state court's decision obviously derived from the language of the Louisiana Constitution, appearing as it does in a discussion of legislative intent in enacting the limitation statute. (Petition Appendix B, at A-17). There is thus no clear implication that a federal speedy trial claim was adjudicated. Moreover, in *Webb v. Webb, supra,* were mention of the phrase "full faith and credit" in the state proceedings was held insufficient to establish a federal claim, even though the laws of the forum state did not use that phrase. Here the possible reference to a federal claim is even more uncertain and remote because the phrase 'speedy trial' does appear in Louisiana law. Respondent also points out that petitioner failed to clutch at this slim, albeit unsubstantial, reed in its argument. Indeed, petitioner fails to allege that any federal claim was ever decided or raised in the state courts (see Appendix B, at 3), and thus implicitly recognizes that no jurisdictional basis exists in this matter.

Respondent would bring to the Court's attention that in its Brief on the Motion to Quash, a hypothetical argument was raised that were the state court to rule that respondent's

ignorance of the law were to result in his being penalized, in violation of the federally guaranteed right to counsel, then a federal question might present itself. (Appendix D, at 7). The Court did not rule on this issue, however, because it upheld respondent's reliance on the limitation statute.

Respondent, emphasizes, therefore, that the state court decision herein was based exclusively on state grounds, specifically La. Code Criminal Procedure Articles 578-81. Petitioner makes no allegation that this was a subterfuge to avoid a federal question, and indeed cannot do so because it is obvious from the record that neither party ever raised a federal question in state proceedings. This Court, therefore, lacks jurisdiction to issue a writ to review this case. *Radio Station WOW v. Johnson*, 326 U.S. 120, 65 S. Ct. 1475, 89 L.Ed. 2092 (1945), *Herb v. Pitcairn*, 324 U.S. 117, 65 S. Ct. 459, 89 L. Ed. 789 (1945).

As petitioner failed to urge 28U.S.C. 1257(3) as grounds for jurisdiction, as no federal claim was expressly or by implication adjudicated in state court proceedings, and as the state court decision was based exclusively on state grounds and without subterfuge to avoid a federal question, respondent contends that this Court lacks jurisdiction over this matter and respectfully urges that this petition for a writ of certiorari be denied.

II.

Petitioner lacks standing to bring this action because it has no federally protected right that could be vindicated by this Court.

Petitioner contends that this case arises under the due process clause of the Fourteenth Amendment to the United

States Constitution, which makes applicable to the states the Fifth and Sixth Amendments of the Bill of Rights. Respondent cannot find in these amendments any federally protected due process right of a state to prosecute persons accused of crimes where a state statute prohibits such prosecutions. Indeed, this Court has specifically held that a state is not a "person" within the contemplation of the Fourteenth Amendment's due process clause, and therefore cannot raise such a claim, *Pennsylvania v. New Jersey*, 426 U.S. 660, 96 S. Ct. 2333, 49 L. Ed.2d 124 (1976). Respondent has never alleged a due process violation under the Fourteenth Amendment, and thus this issue is absent from this case. (See Argument, Sec. I, *supra*.). As petitioner is a state, it cannot allege that its right to due process under the Fourteenth Amendment has been violated, because it has no such right. Petitioner therefore has no standing to bring this action, and its petition for a writ of certiorari should thus be denied.

Petitioner also claims that the statute complained of is vague and overbroad. These doctrines can be envoked only where a state statute has the effect of either failing to put a citizen on notice of proscribed behavior, thus violating due process, *Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed.2d 110 (1972), or has a chilling effect on the exercise of some constitutionally protected right, generally within the context of the First Amendment, *Greyned v. City of Rockford*, 408 U.S. 110, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). As has already been shown, the Fourteenth Amendment, which makes applicable to the states the Bill of Rights, does not contemplate the creation or protection of a state's due process or First Amendment rights, but rather only such rights as are possessed by citizens of the United States. *Pennsylvania v. New Jersey*, *supra*.

As respondent has never raised the issues of vagueness or overbreath, and as petitioner has no standing to raise these issues under the Fourteenth Amendment or the Bill of Rights, this petition should be denied.

Petitioner also asserts a Tenth Amendment claim. Respondent is at a complete loss to understand how this amendment comes into question here. For almost two centuries it has been the rule of this federation of states that, absent some constitutional grant of power to the national government or state interference with the federally protected rights of a United States citizen, regulation of the administration of justice within the states is an exclusive adjunct of state sovereignty. *Calder v. Bull*, 3 U.S. 388 (3 Dal. 388), 1 L.Ed. 648 (1798). Respondent submits that it is precisely the Tenth Amendment which prohibits this Court from entertaining the present suit. This case involves only an internal state procedural matter in the administration of criminal justice which does not violate any federally protected right, and which does not lie within any constitutional grant of power to this Court. This petition should therefore be denied for lack of jurisdiction.

III.

Petitioner contends that because of the alleged vagueness of the state limitation statute, it is unable to ascertain its legal rights and powers. (Petition, Constitutional Provisions Involved, at 2). In effect, petitioner is asking this Court to issue an advisory opinion instructing it as to what it may or may not do pursuant to Louisiana law to avoid infringing on a defendant's federally protected due process rights, when the defendant has not alleged a violation of those rights.

Respondent herein has never alleged any due process

violation by the state, nor has the Louisiana Supreme Court addressed such an issue. (See Argument, Sec. I, *supra.*). In short, there is simply no due process or any other federal claim in this litigation. There is thus no federal case or controversey which exists between petitioner and respondent to render this case cognizable under U.S. Constitution Article III, Paragraph 2, and this Court therefore lacks jurisdiction in this matter.

IV.

Petitioner claims that there are compelling reasons for review of this case. Respondent submits that if, *arguendo*, jurisdiction could be found, this case presents no special and important reasons for review as counseled by Rule 19 of the Rules of the Supreme Court of the United States.

As has already been shown (Argument, Sec. I, *supra*), the state court has not decided a federal question, and therefore Rule 19(1) (a), the only provision in the rule for review of state court decisions, is inapplicable. Additionally, the Louisiana limitation statute is more liberal in guaranteeing speedy trials than the Sixth Amendment because the former statute requires no showing of prejudice or request for trial by an accused, while the latter generally does require such showings. *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). Under these circumstances, it is unlikely that the Louisiana statute presents any danger that it will be used to invade the constitutionally protected right to a speedy trial, and in the present case it has obviously not been so used. For these reasons, the Court in its sound judicial discretion should deny this petition, even were jurisdiction to be found.

CONCLUSION

This Court lacks jurisdiction in this matter because no federal question has been decided by a state court, petitioner lacks standing to bring the petition and petitioner seeks a prohibited advisory opinion. Moreover, if arguendo, a jurisdictional basis could be found, the case presents no special or important reason why it should be considered. For the foregoing reasons, respondent respectfully urges that no Writ of Certiorari can or should be issued in this matter.

DAMAGES - ARGUMENT

Respondent further suggests to this Court that petitioner has engaged in a bad faith effort to keep him imprisoned for the pendency of this petition, knowing full well that it was without legal recourse to this Court to prevent his release after the July 2, 1982, judgment of the Louisiana Supreme Court.

This bad faith is evident from the State's frivolous petition for a writ of certiorari which on its face fails to cite any statute that would remotely confer jurisdiction, and for which no other provision of federal law could possibly confer such jurisdiction; which fails to present any cogent or reasonable argument for jurisdiction, based on case law, or indeed any argument whatsoever that might sustain this Court's jurisdiction; which fails even remotely to indicate the procedural facts which formed the basis of the state court's decision, but rather attempts to obfuscate those facts; which nowhere suggests any reason for the State's failure to bring the case on for trial for over three years, and yet complains that it does not understand what delays might cause an interruption of the statutorily proscribed

limits for bringing a criminal case on for trial; which attempts to assert federal claims on respondent's behalf and to his disadvantage, when respondent has never himself asserted such claims; which purports to raise Fifth, Sixth, and Fourteenth Amendment claims relating to vagueness and overbreadth where the state has no rights to assert under those amendments, and where no argument is presented directed to such claims; which alleges a Tenth Amendment claim without foundation; and which seeks a prohibited advisory opinion. Further proof of bad faith is evident in the State's seeking an extension of time in which to file briefs for rehearing with the Louisiana Supreme Court, and then failing to ever submit such briefs.

As a result, respondent has been made to undergo unwarranted and illegal imprisonment from July 2, 1982, the date on which the highest state court ordered his release, until September 13, 1982, when Justice White refused to stay the state court mandate and he was finally released, all of which resulted in damages.

Respondent therefore prays for an award of damages against the State of Louisiana; William J. Guste, Jr., individually and as Attorney General of the State of Louisiana; Barbara Rutledge, individually and as Assistant Attorney General of the State of Louisiana; The Parish of St. John the Baptist; Harry Morel, Jr., individually and as District Attorney of the Twenty-Ninth Judicial District, comprising the Parishes of St. John the Baptist and St. Charles; and Abbott J. Reeves, individually and as Assistant District Attorney, Twenty-Ninth Judicial District, in the following amounts;

$500.00 per day for seventy days illegal imprisonment $35,000.00

Attorney Fees and costs incident to defending this litigation $15,000.00

All as provided for in Rule 56(4), of the Rules of the Supreme Court of the United States. *Wagner Elec. Co. v. Lyndon*, 262 U.S. 226, 43 S. Ct. 589, 67 L. Ed. 961 (1923); see also 28 U.S.C. 1912 and *Eaton v. Hanover County Bd. of Education*, 459 F.2d 684 (1972).

Respectfully submitted,

G. Walton Caire jumas.

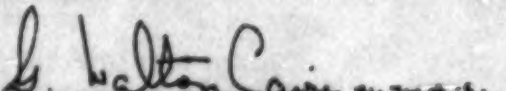
G. WALTON CAIRE
Attorney for Respondent, Charles F. Walgamotte
Post Office Box 155
Edgard, Louisiana 70049
Telephone - (504) 497-3235

CERTIFICATE OF SERVICE

I, G. WALTON CAIRE, ESQ., a member of the Bar of the Supreme Court of the United States, hereby certify that three true copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari were served on Petitioner by mailing copies thereof in a duly addressed envelope to Harry Morel, District Attorney, 29th Judicial District Court, Hahnville Courthouse, Hahnville, Louisiana 70057.

Edgard, Louisiana, this 30th day of September, 1982.

I further certify that all parties required to be served have been served.



G. WALTON CAIRE, ESQ.

APPENDIX A

TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

No. 29,284 DIVISION "C"

STATE OF LOUISIANA
VS.
CHARLES F. WAGMOTTE

MOTION TO QUASH
Filed July 30, 1981

Defendant moves through undersigned counsel for the court to quash the indictment charging him with First Degree Murder for the following reasons:

1. Court of Criminal Procedure Article 578(1) reads as follows:

> "Except as otherwise provided in this Chapter, no trial shall be commenced:
>
> (1) In capital cases after three years from the date of institution of the prosecution;"

On April 14, 1975 this court ordered that the guilty plea to Second Degree Murder be withdrawn and that defendant be returned to Parish Prison to await trial on First Degree Murder. More than three years have have lapsed since the ruling of this court and therefore said indictment should be quashed.

2. There has been no interruption of time limitation and the indictment should be dismissed and no further prosecution against the defendant shall be held.

3. In the alternative, defendant further pleads that he entered a plea of guilty to Second Degree Murder on May 31, 1974. Because he was only fifteen (15) years old on the date of the commission of the crime, this placed him under the provisions of the juvenile laws of this State. He should therefore have been released from prison when he reached the age of twenty-one (21). Defendant was born January 18, 1958, and is therefore twenty-three (23) years old.

Respectfully submitted,

/s/ G. Walton Caire
G. WALTON CAIRE
Attorney for Defendant
Post Office Box 155
Edgard, Louisiana 70049
Telephone - 504-497-3235

APPENDIX B

TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

STATE OF LOUISIANA
VERSUS
CHARLES F. WALGAMOTTE

Number 29284
DIVISION: "C"

THE HONORABLE RUCHE J. MARINO
Judge

Transcript of Proceedings
taken in Open Court at Edgard, Louisiana,
September 14, 1981

HEARING

APPEARANCES:
HARRY J. MOREL, JR., ESQ.
District Attorney
Edgard, Louisiana 70049
FOR THE STATE

G. WALTON CAIRE, ESQ.
Post Office Box 155
Edgard, Louisiana 70049
FOR THE DEFENSE

REPORTED BY:
REBECCA VIAL GOMEZ
Official Court Reporter
29th Judicial District Court

THE COURT:

Okay. This is State versus Walgamotte. As I understand it, this is State versus Walgamotte and it's in reference to a first degree murder case.

MR. CAIRE:

Shouldn't he be here?

THE COURT:

Well, he's not, - -

MR. CAIRE:

I believe he is, Your Honor.

THE COURT:

If he's here, go get him. Ask the sheriff to bring him in, Charles Walgamotte.

MR. MOREL:

While we're waiting, may we approach the bench, Your Honor?

THE COURT:

Okay.

(Counsel approaches bench.)

DISCUSSION OFF THE RECORD.

THE COURT:

Okay, let the record reflect the defendant is present in court with his attorney, Mr. Caire. This is on filing of necessary motions.

MR. CAIRE:

Your Honor, the defendant filed a motion to quash this matter on the grounds that under Criminal Code, Code of Criminal Procedure, Article 578.1 that in capital cases, after three years have elapsed from the date of the institution of the prosecution and nothing was done, then no trial shall be commenced.

Now the last thing done in this trial was on April the 14th, 1975, when this Court had ordered that the guilty plea to second degree murder, which the defendant was allowed to plead originally, be withdrawn and that the defendant be returned to Parish Prison to await trial for first degree murder. He remained in Angola since that date, and of course, we contend that the three years have elapsed, and therefore, he should be set free.

In the alternative, if the Court should hold that his plea to second degree murder was valid, then we then contend that this places him in juvenile court and, - - Because at the time he was fifteen years old, - - even though he pleaded guilty to second degree murder, when he reached the age of twenty-one, he should have been released from prison.

As of this date, the Plaintiff (sic) was, is now twenty-three years old, being born on January the 18th, 1958, and we plead the prescription and the alternative plea.

THE COURT:

State?

MR. MOREL:

Your Honor, first let me point out that in 1975, I don't believe Mr. Caire represented Mr. Walgamotte in this case. He was appointed by Your Honor. I believe, to represent Mr. Walgamotte during these proceedings.

As far as the motion to quash, under 578, Paragraph 1, the State feels because of various habeas corpus proceedings were filed both in the local court and in the Louisiana Supreme Court, we feel this stayed the running of the time limitation, and therefore, we are, we will be able to try him on the first degree murder charge. The defendant had - - He could have petitioned for a speedy trial which he didn't. He chose to go the habeas route, and we feel it would not deny his rights because at every step of these proceedings, he was in court. He wasn't in any hearing by himself, although possibly in the Louisiana Supreme Court.

Under Number Two, my argument is basically the same. There has been interruption in the time limitation because of the fact they had filed various habeas petitions in various Louisiana courts.

And third, Your Honor, I believe is the judge that recalled, that allowed the defendant to recall his guilty plea and asked the district attorney's office in 1975 to set this matter for trial. So I think three is mooted because of the fact that the guilty plea was overturned. I think the State would agree if the guilty plea would have been allowed to stand, then he would have been treated by, as a juvenile under Louisiana law at that time. But since it was overturned, he should be

tried for second degree murder.

Now Your Honor, I believe, if I could clarify one thing, -- the defendant is now charged with first degree murder; is that correct, or is it still in the posture of second degree murder?

THE COURT:

First degree.

MR. MOREL:

Okay. When he was allowed to have his guilty plea recalled, it was changed to first degree murder?

THE COURT:

That's correct.

MR. MOREL:

Okay, So that's the only argument we have. We'll submit it.

MR. CAIRE:

Your Honor, we contend that the only interruptions that were made in this from '75 to February 13th, 1981, when the Supreme Court rendered an opinion denying my client writs on the grounds that these writs were moot because it had ruled on April the 14th of 1975 that the plea be withdrawn. Now then on March the 5th of 1981, the petitioner filed a petition for a writ of habeas corpus, and this was denied on March the 27th of '81, whereupon I was appointed

to represent him, and I filed a motion to quash on the grounds of prescription.

THE COURT:

Thank you.

In Number 29284, State of Louisiana versus Charles F. Walgamotte: The record reflects Mr. Walgamotte was indicted of first degree murder by the St. John the Baptist Grand Jury on August the 17th of 1973, a true bill having been signed in the record by Mr. Borne. The record further indicates that on 8-17-73, - - arraignment was set for 8-27-73. On 8-27 of '73, the defendant, through counsel, was arraigned and pled guilty by reason of insanity at the time of the crime and at the present time was given fifteen days to file pleadings.

On 11-12-73, the defendant was present and all present for the State. The testimony of the doctors was held in Open Court. The defendant's own doctor was to examine him, and thirty days was given to the defendant to file any sanity report.

On 1-9-74, the defendant was present. Mr. Caire at that time was also one of the attorneys representing him, and also Mr. O'Regan. Mr. Barre was the district attorney at the time, along with Mr. Roland St. Martin for the State. At the sanity hearing, the defendant was found capable to stand trial and was sane at the time of the crime. The defendant was then returned to Parish Prison for trial.

On 5-31 of '74, the defendant was present with his attorneys, Mr. Caire, Mr. O'Regan, and Steve Griffith. The

defendant at that time withdrew his plea of not guilty to first degree murder and entered a plea of guilty to second degree murder which was accepted and the usual, normal plea boykin was given. At that particular time, the Court and the district attorney were under the assumption that the law was not as it subsequently became in *state v. Moore* in which a juvenile at that particular time was allowed to plead guilty to second degree murder, - - And he pled to second degree murder, - - and he was to be incarcerated in the state penitentiary. *State v. Moore* subsequently came after that was contrary to that particular rule that I've just stated. At that time, the defendant had pled guilty. This was a plea in conjunction with the rule at the time. He was sentenced under the statute at that particular time to hard labor in the state penitentiary for life without benefit of parole, probation, or suspension of sentence for a period of not less than twenty years, credit given for time served.

Thereafter, a Mr. Wood had represented the defendant on 4-17-75, filing an application at which time was referred to as post-conviction relief under habeas corpus and was ordered at that particular time, - - The record indicates that the petition for habeas corpus indicated the arguments pertaining to *State v. Moore*, etcetera, in reference to the juvenile statute and the constitution of Louisiana stating that if a juvenile pled guilty to first degree murder, which was reduced to second, that the plea to second would bring him into juvenile court and not the state penitentiary as outlined by the district attorney at that particular time.

The plea of second degree murder at this particular time was withdrawn by the Court, by myself, Ruche J. Marino, District Judge, at the time, and on 4-14-74, I reinstituted 4-14-74, the first degree murder charge of the defendant

and ordered him to be held for trial, and he was to be given thirty days in order to file for writs. At that particular time, the ruling was objected to by counsel for the defendant.

On 7-14-75, the case took an unusual twist. At that particular time, this Court was advised for the motions that were then pending, a motion to be heard, that the Honorable C. William Bradley heard the motion. At that particular time, myself stepped down on the order, and an evidentiary hearing was held as to the probabilities or improbabilities and the reasonableness or the volumtariliness (sic.) of the plea of guilty which was ordered by the Supreme Court to be heard by District Court as to whether or not the plea was voluntarily given under the boykin rules, of *Boykin v. Alabama*. Judge C. William Bradley held the evidentiary hearing as ordered by the Supreme Court and the ruling of the court was the plea was voluntary. It should be noted that on 7-14-75 that counsel for the defendant was not, or no one at that particular time, taking into consideration the matter which was set by the Court previously on 4-14-75, stating that the defendant was to be held for trial on first degree murder.

Albeit may that the defendant and the State took it that there was a subsequent appealing or review on the habeas corpus remedy on 4-14-75, the appellate process or the writ process, and no one at that particular time went back to the original order of 4-14-75.

On 6-9-81, there was a motion for an appointment of counsel in which Mr. Caire was re-appointed and it was set for trial. The Supreme Court had ruled on the writ of habeas corpus that was before it at that particular time that relator was ordered to be retried by the State, by the judge, and the State should re-try him in reference to the judgment that the Supreme Court had filed, and this Court set it for

trial on October the 14th, 1981, at 10:00 a.m. The clerk was instructed to pick a jury on a motion to set for this date.

All of these particular things that are reflected in the minutes are included in the record which is made a part hereof of this ruling.

This Court is of the opinion that the argument of counsel stating Number Two, in the alternative, that the answer to the plea of second degree murder was valid in that he be placed in juvenile court which is answered by this Court in the negative.

This Court is of the opinion that in reference to Article Number One, Article 578.1, the capital case, stating that three years of prosecution, this Court is of the opinion that when this particular matter was set for trial on the first degree murder case is that counsel for the defendant and the defendant sought another remedy of which the remedy was by writ or by the appellate process of the Supreme Court, and at this particular time, this Court finds that the prescription was either suspended or interrupted, and really at the most is that equitable estoppel would work in this particular regard in that the State was at the particular time waiting for the Supreme Court to make whatever decision that they should have made in reference to this particular matter.

Therefore, this Court will find that a motion to quash is not valid and will overrule same. I have been advised by the defense attorney that if I rule against him that he will take writs.

This Court will leave this matter open for ninety days

for the taking of writs in the Louisiana Supreme Court, and then whatever writs are filed, this Court will make them part of the whole entire record, the rulings that I've just made, the arguments of Mr. Morel, the arguments of Mr. Caire, and that the trial date of October 14, as I understand it, is going to have to be cancelled due to the fact that the writs will not be given to the Supreme Court in time in order to get a possible situation. Should the Supreme Court rule adverse to me, then of course, that goes one way. Should they follow this Court's ruling, then of course, this Court will quickly set the matter for trial, quickly and above all other cases.

Mr. Caire?

MR. CAIRE:

Thank you, Your Honor.

THE COURT:

Okay, Gentlemen.

MR. MOREL:

Thank you, Judge.

END OF PROCEEDINGS

APPENDIX C

SUPREME COURT OF LOUISIANA

DOCKET NO. _____

STATE OF LOUISIANA
VERSUS
CHARLES F. WAGMOTTE

NUMBER 29,284 ON THE CRIMINAL DOCKET OF THE 29th JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF ST. JOHN THE BAPTIST

APPLICATION BY DEFENDANT FOR WRITS OF CERTIORARI, PROHIBITION, MANDAMUS AND REQUEST FOR A STAY ORDER

JURISDICTION

Pursuant to Article 5, of the Constitution of 1974 of the State of Louisiana, this Court has supervisory jurisdiction over all inferior courts. For the reasons herein stated, this Honorable Court should exercise its jurisdiction over the ruling of the Honorable Ruche J. Marino, Judge, District Court, 29th Judicial District, Parish of St. John the Baptist.

STATEMENT OF THE CASE

The record will show that on April 14, 1975, the trial court ordered that the guilty plea of Mr. Wagmotte be withdrawn and that he return to Parish Prison to await trial on First Degree Murder.

ARGUMENT

LSA-C. Cr.P. Article 578(1) provides that:

> "Except as otherwise provided in this Chapter, no trial shall be commenced:
>
> (1) In capital cases after three years from the date of institution of the prosecution;"

When this Court on April 14, 1975, ordered that the guilty plea to Second Degree Murder be withdrawn and that defendant be returned to Parish Prison to await trial on First Degree Murder, they were placed on notice and should have acted accordingly. It is now more than six (6) years since this Order was given and the trial has yet to commence.

This unnecessary delay in bringing defendant to trial was in no way caused by any action of the defendant. He did nothing to interrupt prescription and the State has had more than a reasonable time after the ruling to reset the case for trial.

The purpose of the Statute of Limitations is to make sure that once the criminal prosecution is instituted, prosecution must proceed within established time limitations to assure a speedy trial, resulting in prejudice to the defendant. The defendant has a constitutional right to a speedy trial. This right was certainly denied him by a six (6) year interval between the Court's Order on April 14, 1975 and commencement of his trial.

There has been no interruption of time limitation and the indictment should be dismissed and no further prosecution

against the defendant should be held.

In the alternative, defendant further pleads that he entered a plea of guilty to Second Degree Murder on May 31, 1974. Because he was only fifteen (15) years old on the date of the commission of the crime, this placed him under the provisions of the juvenile laws of this State. He should therefore have been released from prison when he reached the age of twenty-one (21). Defendant was born on January 18, 1958, and is therefore twenty-three (23) years old.

For the foregoing reasons, the defendant, Charles F. Wagmotte, respectfully requests this Honorable Court for an Order staying the trial in the case of State of Louisiana Versus Charles F. Wagmotte until proper disposition of the Defendant's application for Writs of Certiorari, Mandamus and Prohibition has been made by this Honorable Court.

It is further respectfully requested for an Order dismissing all charges against him, that he be released from custody and that the ruling of the trial judge be annuled and set aside.

Respectfully submitted,

/s/ G. Walton Caire
G. WALTON CAIRE
Attorney for Defendant
Post Office Box 155
Edgard, Louisiana 70049
Telephone - 504 - 497 - 3235

STATE OF LOUISIANA

PARISH OF ST. JOHN THE BAPTIST

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified in accordance with law in and for the State and Parish aforesaid, personally came and appeared G. WALTON CAIRE, who, having been first duly sworn, deposed and stated that:

1. He is of counsel for defendant-relator in these proceedings.

2. All of the allegations contained in the above and foregoing application for Writs and a Stay Order are true and correct to the best of his knowledge, information and belief;

3. A copy of this application has been served on the Honorable Muche J. Marino, Judge of the 29th Judicial District Court of Louisiana, and on Honorable Harry J. Morel, Jr., District Attorney in and for the 29th Judicial District of Louisiana, prior to filing of same in the Supreme Court of Louisiana.

4. All of the documents attached hereto and filed herewith are true and correct copies of the original documents filed in the record herein.

/s/ G. Walton Caire
G. WALTON CAIRE
Attorney for Defendant
Post Office Box 155
Edgard, Louisiana 70049
Telephone 504 - 497 - 3235

SWORN TO AND SUBSCRIBED BEFORE ME,
this 22nd day of September, 1981.

/s/ Audrey Holmes
NOTARY PUBLIC

CERTIFICATE

I hereby certify that a copy of the above and foregoing pleadings have been served on the District Attorney and Judge Ruche J. Marino, hand delivered, this 22nd day of September, 1981.

/s/ G. Walton Caire
G. WALTON CAIRE

APPENDIX D

SUPREME COURT
STATE OF LOUISIANA

NUMBER 81–K-2706

STATE OF LOUISIANA

VERSUS

CHARLES F. WALGAMOTTE

Filed Jan. 15, 1982

APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT PARISH OF ST. JOHN THE BAPTIST RUCHE J. MARINO, DISTRICT JUDGE

ORIGINAL BRIEF IN BEHALF OF CHARLES F. WALGAMOTTE, DEFENDANT, IN SUPPORT OF WRITS OF CERTIORARI PROHIBITION, MANDAMUS AND STAY ORDER, PARISH OF ST. JOHN THE BAPTIST NUMBER 29, 284

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STATEMENT OF THE CASE

Charles F. Walgamotte, relator herein, was charged with having committed First Degree Murder on July 9, 1973, in violation of Louisiana R. S. 14:30. On August 17, 1973, a true bill was returned by the Grand Jurors empaneled and sworn in and for the body of St. John the Baptist Parish, State of Louisiana. (Rec. p. 6). On August 27, 1973, defendant was arragined wherein he entered a plea of not guilty and not guilty by reason of insanity. (Rec. p. 7).

After numberous pre-trial hearings, a plea bargaining was held wherein defendant was allowed to change his plea and enter a plea of guilty of Second Degree Murder. (Rec. p. 31). He was sentenced on May 31, 1974, to life imprisonment, without benefit of parole, probation or suspension of sentence for twenty years, (Rec. p. 30), and duly transported to Angola State Penitentiary to begin serving his sentence.

On March 31, 1975, defendant filed a petition to have his guilty plea withdrawn and his conviction vacated, on the grounds that he was a juvenile at the time of the commission of the crime and therefore the District Court lost jurisdiction over him when the charge was reduced to Second Degree Murder. (Rec. p. 44). In response to this petition on April 14, 1975, the trial court withdrew the plea and remanded defendant for trial on the charge of First Degree Murder. (Rec. pp. 52-65).

While the record is defective as to the particulars, it is apparent that this Court took cognizance of the issues raised by defendant's petition of March 31, 1975, because in Docket No. 56-304, this Court issued, on June 17, 1975, an Order that the trial court conduct an evidentiary hearing to determine the nature, content and effect of the plea bargain

agreement, and that further proceedings be stayed pending that hearing. (Rec. p. 49). This hearing was had on July 14, 1975, and the trial court ruled that the plea bargain was voluntarily and knowingly entered into by defendant. (Rec. p. 94). Defendant notes here that when this hearing was had, the issue of the effect of the plea bargain was moot because the trial court had already withdrawn the plea and remanded defendant for trial. (Ct. Rec. p. 167).

It further appears from the defective record that defendant sought relief in this Court as to the trial court's remand of the case for trial, because in Docket No. 57, 838, this Court issued, on April 30, 1976, a denial of writs. (Rec. p. 76).

As of April 30, 1976, the date of the above ruling, the Record shows that all preliminary pleas entered by defendant were disposed of, and the case was ready for trial by the State.

Between April 30, 1976, and March 7, 1980, a period of almost four years, the State took no further action to bring the defendant to trial, but instead returned him to Angola, in disregard of the remand order that he be returned to Parish Prison (Rec. p. 65), and permitted him to remain incarcerated in the State Penitentiary for this four year period under a vacated sentence.

On March 7, 1980, defendant filed *pro se* a petition for Writ of Certiorari with this Court wherein he sought to have his original guilty plea vacated (Rec. p. 144). On February 13, 1981, this writ was denied on the grounds that the sentence had been vacated on April 14, 1975, by the trial court, and therefore this issue was moot. (Rec. p. 167).

Defendant next filed *pro se* a petition for a Writ of Habeas Corpus in the District Court, he apparently sought a Remedial Writ from this Court to compel the District Court to act on the habeas corpus petition (Ct. Rec. p. 173). Upon a denial of habeas corpus relief by the trial court, (Rec. p. 175), this Court ruled, on April 17, 1981, that the request for a remedial writ was moot after the action by the trial court, and the writ was denied. (Rec. p. 176).

On July 30, 1981, defendant, through undersigned court appointed counsel, filed a Motion to Quash the Indictment in the District Court, pursuant to La. Code Criminal Procedure, Article 581, on the grounds that the State had failed to bring the matter on for trial within the three year period of limitation as mandated by La. Code Criminal Procedure, Article 578(1). (Rec. p. 183). This motion was denied by the trial court, at a hearing held on September 14, 1981. (Supp. Rec. p. 13). While the trial court's reasons for this denial are not clear, it appears that the trial court was under the impression that when the original plea was withdrawn on April 14, 1975, defendant and his counsel sought a remedy by writ or appeal to this Court, and further that this writ or appeal was never acted on by this Court, thus interrupting or suspending the time limitation. (But Ct. Rec. p. 76. Writs denied in Docket No. 57,838). The trial court also noted that "equitable estoppel" was at work. (Supp. Rec. p. 13).

Defendant then sought a Writ of Certiorari with this Court, which Writ was granted on November 27, 1981, and this matter is now properly before this Court.

On May 28, 1981, defendant was ordered returned from Angola to the St. John the Baptist Parish Prison where he is presently awaiting trial on the charge of First Degree Murder.

SPECIFICATION OF ERRORS

The trial court erred in denying relator's Motion to Quash the Indictment for failure of the State to bring this matter on for trial within the time limitations established by La. Code Criminal Procedure, Article 578(1).

Specific allegations of errors are:

1. The trial court erroneously found that actions on the part of defendant interrupted or suspended the period of limitations.

2. The trial court erroneously found that equitable estoppel was at work in this case.

3. The trial court erroneously found that defendant waived his right to dismissal under La. Code Criminal Procedure, Article 581.

4. All other errors patent on the face of the record.

ARGUMENT

> La. Code Criminal Procedure, Article 578(1) provides that:
>
> Except as otherwise provided in this Chapter, no trial shall be commenced:
>
> (1) In capital cases after three years from the date of institution of the prosecution;"

In addition, Article 579(2) provides that the above three year limitation is interrupted if a defendant flees the state,

if he cannot be tried because of insanity, if his presence for trial cannot be obtained by legal process, or "for any other cause *beyond the control* of the State" (emphasis added).

The Record herein clearly reveals that defendant was not brought to trial within three years of the commencement of the prosecution on July 9, 1973, as required by Article 578(1). It is equally clear that defendant did not flee the State, that he was not insane, that his presence for trial could readily have been obtained by legal process, and that there was no cause beyond the control of the State which prevented his being brought to trial, nor is there any cause whatsoever, discernable from the record, for the State's delay. As such, the State is now barred from bringing this action by La. Code Criminal Procedure, Article 578(1).

Defendant is fully aware of the provisions of Article 580, which state that any preliminary plea suspends the period of limitation of Article 578 until a ruling by the Court thereon. Again the record is clear that as of this Court's ruling on April 30, 1976 (Rec. p. 76), all preliminary pleas filed by defendant had been ruled upon and the three year period of limitation commenced to run again. On that date, the State had three years, or until April 30, 1979, within which to bring the matter on for trial, less thirty days between the August 17, 1973 indictment (Rec. p. 6) and defendant's September 17, 1973, application for appointment of a sanity commission. (Rec. p. 10). As the State failed to take any action in this matter as of at least April 30, 1979, it is now barred from bringing this matter to trial.

In regard to the trial court's apparent conclusion at the hearing of September 14, 1981, (Supp. Rec. p.3), that defendant filed for writs or appealed the April 14, 1975 remand order and that that petition or appeal is still pending

in this Court, defendant first contends that the record herein contains no such petition for writs or an appeal. However, the record does show that on April 30, 1976, in Docket No. 57,838, this Court denied writs in this matter. (Rec. p. 76). Thus, if writs were sought as asserted by the trial court, the above denial was obviously in response thereto. Further, the record is devoid of any unresolved preliminary or other pleas after April 30, 1976, or of any other indication that any matters which would have interrupted or suspended the limitation period were still pending at that time. Obviously, then, the three year time limitation began to run on at least April 30, 1976, and the period of limitation expired on at least April 30, 1979.

In an abundance of caution, defendant also points out that if the trial court's ruling of September 14, 1981, was instead an assertion that the stay order of July 14, 1975 was never dissolved, then the trial court was again in error.

The June 17, 1975 order specifically stated: "Other proceedings stayed pending that (evidentiary) hearing." (Rec. p. 49). That hearing was held on July 14, 1975. Once the hearing was had, the order staying proceedings pending that hearing dissolved. Moreover, this dissolution was recognized by this Court in its February 13, 1981, order, where it was stated:

> The stay order granted applicant by this Court on June 17, 1975, in connection with our ordering the trial court to conduct an evidentiary hearing regarding relator's guilty plea, is no longer in effect. (Rec. p. 167).

Defendant also reiterates here that when the order of June

17, 1975 was issued for an evidentiary hearing on the effect of the plea bargain, that entire question had already been mooted by the April 14, 1975, action of the trial court withdrawing the plea and remanding the case for trial. (Rec. p. 52).

In regard to the trial judge's ruling as to equitable estoppel, or waiver, the defendant also remains uncertain as to the specific implications of that ruling. However, if the reference to estoppel is taken to mean that when defendant sought writs in 1980 and 1981, rather than immediately filing a Motion to Quash under Article 581 he somehow waived his right to dismissal, then defendant respectfully contends that the trial judge was in error.

Article 581 is explicit that the right of dismissal for failure to bring a matter for trial within the time limits of Article 578 is waived only by a failure to make the motion to quash before trial. As this motion is timely made before trial, no waiver may be asserted by the State.

Defendant would also note that under Article 580, a suspension of time occurs whenever "a motion to quash or other preliminary plea" is filed. As the statute treats a motion to quash and other preliminary motions equally as to their effect on suspension, the logic of the trial court, if correctly understood by defendant, would produce the result that even a motion to quash suspends or otherwise interrupts the prescriptive period, or operates as a waiver of the right to dismiss. If that reasoning were accepted, the result would be that the filing of a motion to quash would constitute a waiver of the right to dismissal, the precise relief which the motion to quash seeks to obtain. Such a result is absurd and in direct contradiction to Article 581. It is submitted here that such reasoning cannot be countermaned by this Court. *State v. Benson*, 254 La. 867, 227

So. 2d 913 (1969).

Defendant submits, that the proper interpretation of Article 580 is that once the limitation period has expired no preliminary pleadings or motions to quash filed after that expiration can have the force of reviving the State's right to bring a case to trial. Nor can such pleadings constitute a waiver of the right to dismissal, because waiver only occurs in the manner set forth in Article 581 i. e. by failure to move to quash before trial.

Defendant further notes that if it were to be held that defendant waiver his right to dismissal by incorrectly filing *pro se* petitions for writs before filing a motion to quash, then defendant would thereby be denied his right to effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and the Constitution and Laws of the State of Louisiana.

CONCLUSION

The Record makes clear, first, that there were no impediments or other causes beyond the control of the State that prevent it from bringing this matter to trial between April 30, 1976, and March 7, 1980, a period well over three years; second, the State is therefore prohibited by La. Code Criminal Procedure, Article 578(1) from bringing this matter to trial at this time; third, all suspensions or interruptions of the time limitation of three years ceased as of April 30,1976, and the three year limitation began to run at least from that date because no further motions or preliminary pleas by defendant were then pending; fourth, the right to dismissal can only be waived by submitting to trial before filing a motion to quash, and not be merely seeking *pro se* other types of relief after the period of

limitations has expired.

For the foregoing reasons, Charles F. Walgamotte, Relator herein, respectfully urges this Court to reverse the opinion of the trial court and grant this Motion to Quash, as well as all other relief to which relator may be entitled, on the face of the Record, and including an order that no further prosecution against the defendant for the same or a lesser offense based on the same facts be instituted by the State.

Respectfully submitted,

/s/ G. Walton Caire
G. WALTON CAIRE
Attorney for Defendant
Post Office Box 155
Edgard, Louisiana 70049
Telephone - 504-497-3235

CERTIFICATE

I, G. Walton Caire, hereby certify that a copy of the above and foregoing Brief has been delivered to the office of the District Attorney for the Parish of St. John the Baptist, by hand, and that a copy of said Brief has been served on Judge Ruche J. Marino, by mailing a copy of same to his office at the Courthouse in Hahnville, Louisiana, this 14th day of January, 1982.

/s/ G. Walton Caire
G. WALTON CAIRE

APPENDIX E

IN THE
SUPREME COURT
OF THE
STATE OF LOUISIANA

No. 81-K-2706

STATE OF LOUISIANA,
Plaintiff-Appellee

VERSUS

CHARLES F. WALGAMOTTE,
Defendant-Appellant

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST STATE OF LOUISIANA, No. 29,284, THE HONORABLE RUCHE J. MARINO, JUDGE PRESIDING

APPLICATION FOR REHEARING ON BEHALF OF THE STATE OF LOUISIANA, PLAINTIFF-APPELLEE AND REQUEST FOR EXTENSION OF TIME TO FILE BRIEF IN SUPPORT THEREOF

HARRY L. MOREL, JR.
DISTRICT ATTORNEY
TWENTY-NINTH JUDICIAL DISTRICT
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STATE OF LOUISIANA

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IN THE
SUPREME COURT
OF THE
STATE OF LOUISIANA

NO. 81-K-2706

STATE OF LOUISIANA,
Plaintiff-Appellee

versus

CHARLES F. WALGAMOTTE,
Defendant-Appellant

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST STATE OF LOUISIANA, NO. 29,284, THE HONORABLE RUCHE J. MARINO, JUDGE PRESIDING

APPLICATION FOR REHEARING ON BEHALF OF THE STATE OF LOUISIANA, PLAINTIFF-APPELLEE AND REQUEST FOR EXTENSION OF TIME TO FILE A BRIEF IN SUPPORT THEREOF

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF LOUISIANA:

The State of Louisiana is aggrieved by the majority opinion handed down in this case which, it believes, has been based on erroneous interpretation of the facts and is contrary to the law and requests that a Rehearing be granted herein to the end that the errors inherent in the majority opinion could be corrected. The conclusion of the majority

opinion has created great consternation and perplexity not to say anything of confusion by virtue of its apparent inconsistency with prior jurisprudence and the statutes.

Pursuant to Rule 9 of the Rules of the Supreme Court of Louisiana effective January 1, 1974 the State makes application for Rehearing in the above entitled and numbered cause decided May 17, 1982 by a vote of 5 majority, one concurring (Watson, J.), one dissent (Lemmon, J.).

The issues regarding prescription of commencement of prosecution and trial for first degree murder are confused. The law is complex. The arguments extensive. The State requests additional time, thirty days, that is until July 1st, 1982, in which time to file its brief in support of this Application.

Walgamotte was 15 years old when he was charged on August 17, 1973 with first degree murder. Despite a clear delineation of chronology of events which indicated interruption and/or suspension of running of time limitations this Court erroneously interpreted the facts and dates which requires further explanation for clarification.

By far the most logical method of approaching Justice Calogero's opinion for consideration for rehearing would be through a detailed rendering of the statutes and jurisprudence on time limitations (C. Cr. P. Art. 571 et seq.).

Acceptance of the instant opinion as it now stands, based on criteria spanning numerous years of jurisprudence, would be to share a common bewilderment about the nature of just what actions are in fact "beyond the control of the State" to warrant an interruption of the time limitations.

The confusion created by the majority opinion's logic becomes apparent immediately one begins to compare the jurisprudence with the facts. The inadequacy of the criteria used to deal with this unique case is difficult to accept. The interlocking lines of action by the trial court and the state and defense, sometimes merely a minute entry on which the opinion attaches great significance is hard to pin down and baffles this writer. In effect, dismissing the defendant's prosecution suggests a mandarin stance, indicating no ground rules on which future prosecutions (or lack of prosecutions) can be based.

the only safe resort for this Court at this stage is to follow the labyrinthine path of the *whole* of this Court's jurisprudence and come to terms with a synopsis by the State of the manifold ambiguities that has a better and clearer representation of the causes of the interruptions.

FOR THE FOREGOING REASONS, the State submits a Rehearing should be granted in this matter and the State be authorized to file a comprehensive brief in support of this application on or before July 1, 1982.

Respectfully submitted,

HARRY L. MOREL, JR.
DISTRICT ATTORNEY
TWENTY-NINTH JUDICIAL DISTRICT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

/s/ Abbott J. Reeves
ABBOTT J. REEVES
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ORDER

Considering the foregoing application and request for extension of time to file a brief in support thereof, the State is granted an additional 30 days, that is until July 1, 1982 to file its brief in support thereof in this matter.

Signed in New Orleans, Louisiana on this _____ day of _____, 1982.

JUSTICE

APPENDIX F
SUPREME COURT
STATE OF LOUISIANA

NUMBER 81-K-2706

STATE OF LOUISIANA
Plaintiff-Appellee

versus

CHARLES F. WALGAMOTTE
Defendant-Appellant

MOTION IN OPPOSITION TO REHEARING
AND GRANTING ADDITIONAL TIME IN WHICH TO
FILE A BRIEF
Filed July 1, 1982

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SUPREME COURT
STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

CHARLES F. WALGAMOTTE

NO. 81-K-2706

MOTION IN OPPOSITION TO REHEARING AND GRANTING ADDITIONAL TIME IN WHICH TO FILE A BRIEF

NOW INTO COURT, through his undersigned counsel comes, Charles F. Walgamotte, Defendant-Appellant, who hereby opposes the application for a Rehearing filed by counsel for the State of Louisiana, Plaintiff-Appellee, and who also opposes the request of counsel for additional time in which to file a Brief in support of his Motion, for the following reasons, to-wit:

I.

Counsel for the State had fourteen (14) days in which to file a Motion for a Rehearing, and waited until the last day to file said Motion. This Motion is merely being filed as a dilatory tactic to delay the release of Charles F. Walgamotte from St. John the Baptist Parish Jail.

II.

The State was further granted until June 28, 1982, to file a Brief in support of their application for a Rehearing. On

June 29, 1982, the State filed a Motion for additional time in which to file a Brief. Sufficient time was given them to prepare a Brief in support of their position. The law and the evidence are in favor of Charles F. Walgamotte, as evidence by the decision of this Court and additional time to file a Brief will merely delay the release of Charles F. Walgamotte from Custody.

WHEREFORE, Charles F. Walgamotte, Defendant-Appellant, prays that this Court deny the request of the State of Louisiana, Plaintiff-Appellee, for additional time within which to file a Brief.

G. Walton Caire
G. WALTON CAIRE
Attorney for Defendant-Appellant
Post Office Box 155
Edgard, Louisiana 70049
Telephone 504-497-3235

ORDER

Considering the foregoing Motion of Charles F. Walgamotte, Defendant-Appellant in this matter, the Motion of the State of Louisiana, Plaintiff-Appellee, is hereby denied.

New Orleans, Louisiana, this day of, 1982.

JUDGE

APPENDIX G

IN THE
SUPREME COURT
OF THE
STATE OF LOUISIANA

No. 81-K-2706

STATE OF LOUISIANA,
Plaintiff-Appellee

VERSUS

CHARLES F. WALGAMOTTE,
Defendant-Appellant

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. JOHN THE BAPTIST STATE OF LOUISIANA, No. 29,284, THE HONORABLE RUCHE J. MARINO, JUDGE PRESIDING

APPLICATION FOR EXTENSION OF STAY
OF MANDATE
UNTIL DECISION FROM UNITED STATES
SUPREME COURT

MAY IT PLEASE THE COURT:

NOW COMES, Harry Morel, District Attorney, through undersigned counsel, Abbott J. Reeves, Assistant District Attorney and with respect moves this Court to extend the Stay of Mandate granted by this Court on July 6, 1982 from September 4, 1982 until such time as the United States Supreme Court renders a decision on the Writ Application filed in Washington by the State from the decision, *State v. Walgamotte*, 415 So.2d 205, rehearing denied July 2, 1982.

Originally, the State requested 90 days stay based on a phone call to the United States Supreme Court, office of the Clerk, which advised that time period was required for full disposition of such a matter. While this Court was gracious enough to give the State 60 days, that is until September 4, 1982, the fact is the United States Supreme Court will not be able to dispose of the matter until approximately October 25, 1982. This is based on the following "normal" timetable as advised by Deputy Clerk in the United States Supreme Court (telephone 202-252-3023): (1) the State, or petitioner, is granted 60 days to file his Writ Application, which the State will have perfected* on or before August 31, 1982 delivered in Washington, D. C.; (2) upon receipt of State's brief, the respondent is granted 30 days to answer, if he so desires, or if the United States Supreme Court requests it. That would bring the timetable to October 1, 1982 for purposes of briefing; (3) thereafter, the Deputy Clerk in Washington advises the normal delay before an opinion is rendered is approximately three weeks, thus October 25, 1982 would be the earliest date for an opinion from Washington.

The Clerk in Washington advises that it is the normal practice, when a State Supreme Court grants a Stay of Mandate in the first instance, the Stay usually states that if the petition to Washington is filed timely, the Stay is in effect until a rendering of an opinion by the United States Supreme Court.

The State requests an extension of the Stay of Mandate from September 4. 1982 until such time as an opinion is rendered by the United States Supreme Court in this matter.

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* A copy of the State's Petition to Washington is being sent to this Court under separate cover, directly from the Printer.

Respectfully submitted,

HARRY MOREL
DISTRICT ATTORNEY
29TH JUDICIAL DISTRICT
PARISH OF ST. JOHN THE
BAPTIST STATE OF
LOUISIANA

/s/ Abbott J. Reeves
ABBOTT J. REEVES
ASSISTANT DISTRICT ATTORNEY
RESEARCH AND APPEALS
P.O. BOX 465
419 DERBIGNY STREET
GRETNA, LOUISIANA 70054
TELEPHONE: (504) 367-1212

ORDER

CONSIDERING THE FOREGOING MOTION, and reasons set forth therein, a Stay of Mandate of this Court issued pursuant to its opinion in *State v. Walgamotte*, 415 So.2d 205, rehearing denied July 2, 1982 is hereby granted until such time as the United States Supreme Court renders an opinion on the Petition for Writ of Certiorari in the United States Supreme Court in this matter.

Signed in New Orleans, Louisiana this day of, 1982.

JUSTICE

APPENDIX H

SUPREME COURT
STATE OF LOUISIANA
NEW ORLEANS

September 2, 1982

Hon. Harold L. Montegut
Clerk of Court
Parish of St. John the Baptist
P.O. Box 280
Edgard, LA 70049

Re: No. 81-K-2706
State of La. vs. Charles F. Walgamotte
(29th JDC # 29,284)

Dear Mr. Montegut:

This is to advise that the Court took the following action, this date, in the above entitled matter:

> "All proceedings in this case are stayed for 10 days from date to allow the State to seek a further stay from the U.S. Supreme Court."

With kindest regards, I remain,

Very truly yours,

Frans J. Labranche, Jr.
Clerk of Court

/s/ Dan B. Haggerty, Jr.
Dan B. Haggerty, Jr.
Deputy Clerk of Court

DBHJr/kf

ccs: Hon. Ruche J. Marino
Hon. Harry J. Morel, Jr.
Abbott J. Reeves, Esq.
G. Walton Caire, Esq.

APPENDIX I

NO. 82-366

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1982

STATE OF LOUISIANA,

Petitioner

Vs.

CHARLES A. WALGAMOTTE,

Respondent

On Petition For A Writ of Certiorari To the Supreme Court of The State of Louisiana.

APPLICATION FOR STAY OF PROCEEDINGS PENDING DECISION BY U. S. SUPREME COURT OF WRIT APPLICATION FILED AUGUST 31, 1982

MAY IT PLEASE THE COURT:

The State of Louisiana, petitioner herein, filed its application timely for a writ of certiorari to the Supreme Court of the State of Louisiana in this court on August 31, 1982. Proceedings had been stayed for 60 days, that is until September 4, 1982 by the Louisiana Supreme Court. Afurther stay was granted on September 2, 1982, to allow the petitioner herein, the State of Louisiana, ten days from date (that is until Sunday, September 12, 1982) to seek a further

stay from the United States Supreme Court.

It is the purpose of this application to seek a further stay of proceedings, particularly to prevent the premature release of respondent, Charles Walgamotte, until disposition of the application for writ by this Court. It is estimated that this Court will be able to dispose of the matter within the next six weeks which would not bring any undue hardship on the respondent.

REASONS WHY THE STAY SHOULD BE GRANTED

Charles A. Walgamotte, age 15 at the time he killed Mrs. Vicknair in July 1973, now approximately 21 years old, pleaded guilty, with his brother, Frank, to the particularly gruesome killing of (second degree - - in the course of an armed robbery) Mrs. Rita Vicknair. The criminal act involved the stabbing of the victim 22 times and then Charles Walgamotte choked the victim fracturing her thyroid cartilage.

To allow his release before the full extent of review of this matter has run its course - - set at this time for September 12, 1982, SUNDAY, before this court can act on the writ of certiorari would cause irreparable harm to the criminal justice system and the immediate community of Louisiana in particular. Walgamotte could become a fugitive beyond recapture. A self-confessed killer of the most dangerous kind would be on the loose at great danger to the community.

The State believes, after careful consideration of its application for writ by this Court, that the Writ would be granted by at least four, in deed unanimously, justices of this court. The issue is singular; whether or not the state statute under which the Louisiana Supreme Court reversed

the trial courts ruling denying a Motion to Quash the indictment is overbroad and/or vague. Not unlike this Court's numerous rulings in finding similar wored obscenity and loitering etc. statutes unconstitutional facially and substantially.

The State originally sought ninety days stay in the Louisiana Supreme Court but was granted only sixty days stay. Apparently the Louisiana Supreme Court thought the writ could be resolved in that time period. TheState had asked for ninety days under the impression it would have been sufficient to get action by this Court.

In regard to the substance of the State's writ and as to why this court will probably grant the writ, the court below has been clearly inconsistent with its own and this court's decisions regarding just exactly what is and what is not "beyond the control of the State," for purposes of statute of limitations. The details of exactly whether or not the original indictment was still valid or was dismissed were not properly or adequately addressed or considered by the lower court. The delays, itemized in the writ application, were not considered as to whom they should be credited for or against for purposes of finding fault for the causes of the delays.

Applying the analysis set forth in the innumerable cases of overbreadth and vagueness in both state and federal courts, the statute in question regarding limit actions or commencement of trial would indicate a finding of unconstitutionality by this court.

The balance of hardship weighs heavily in this applicant's favor should Walgamotte get released on Sunday, September 12, 1982 before this Court can properly consider the application and should the statute be found unconstitutional. The stay granted by the Louisiana Supreme Court

was curiously limited to sixty days, but it does indicate a proper stay to a date corresponding with a decision by this Court on the Writ Application would be proper. Such an undesireable outcome as releasing the convicted killer who could easily elude future recapture is unthinkable.

Lastly, four justices of this Court would most likely v[illegible] to grant this writ is clear by virtue of the obvious overbreadth and vagueness of the statute on its face. *Beame v. Friends of the Earth*, 434 U.S. 1310, 1312-14 (1977). Equipose of justice requires a further stay at least until the writ application is acted upon.

For the foregoing reasons, evaluating the balance of hardships in favor of the State of Louisiana in this instance, and where four justices of this Court would likely vote to grant the writ of certiorari, the State of Louisiana prays that this Court stay further proceedings until resolution of the application for writ.

This Court's attention is directed to the fact that the present stay authorized by the Louisiana Supreme Court expires on September 12, 1982, the day after tomorrow, Sunday, and if this Court does not grant a further stay the respondent, Charles Walgamotte will be released at that time.

Respectfully submitted,
HARRY MOREL,
DISTRICT ATTORNEY
Parish of St. Charles
29TH JUDICIAL DISTRICT

/s/ Abbott J. Reeves,
ABBOTT J. REEVES,

ASSISTANT DISTRICT ATTORNEY
PARISH OF ST. CHARLES
419 Derbigny Street
P.O. Box 465
Gretna, Louisiana 70054
Telephone (504) 367-1212

CERTIFICATE

I hereby certify that a copy of the foregoing Application for Stay was served on Respondent by mailing a copy thereof in a duly addressed envelope to G. Walton Caire, Attorney for Defendant, Charles Walgamotte, at P.O. Box 155, Edgar, La. 70049 this 9th day of September, 1982.

/s/ Abbott J. Reeves
ABBOTT J. REEVES

APPENDIX J

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

September 13, 1982

Abbott J. Reeves, Esq.
Assistant District Attorney
Parish of St. Charles
P.O. Box 465
Gretna, Louisiana 70054

RE: Louisiana v. Charles Walgamotte
(No. 82-366)
A-266

Dear Mr. Reeves:

Your application for a stay in the above-entitled case was presented to Justice White, who has denied your application with the following notation:

> "It appearing to the undersigned that the judgment of the Supreme Court of Louisiana sought to be stayed was grounded in state law, that no issue of federal law was implicated, and that the Supreme Court of the United States is therefore without jurisdiction to review the judgment, the application for the stay filed by the State of Louisiana is denied. Byron R. White, Associate Justice. 9/11/82."

Very truly yours,

ALEXANDER L. STEVAS, Clerk

/s/ Katherine A. Downs
Katherine A. Downs

rjb
cc: G. Walton Caire, Esq.